

GENERAL CONDITIONS OF SALES AND DELIVERY VETTER INDUSTRIE GMBH

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A. General Provisions

I. Conclusion of Contract

1. These General Conditions of Sale and Delivery of VETTER Industrie GmbH will be used for all contracts of purchase, work and services as well as labour and materials between VETTER Industrie GmbH and companies, legal entities under public law and public-law special funds within the meaning of Art. 310 Sect. 1, German Civil Code. Deliveries, services and quotes by VETTER Industrie GmbH shall be made exclusively based on these conditions. These shall therefore be applicable for all future business dealings, even if they are not expressly agreed upon again. These conditions shall be considered to have been accepted at the latest when the goods or services are received. The present Conditions of Sale and Delivery are an integral part of all contractual relationships between us and third parties. Conflicting General Terms and Conditions or Terms of Business of the client's that deviate from these General Conditions of Sale and Delivery shall be objected to. They shall not become part of the contract. The same shall apply for other pre-formulated legislative codes such as the VOL (official contracting terms for award of service performance contracts – translator's note).

2. Our quotes are non-binding. A contract is concluded – if no special agreements are made – with the written order confirmation by us.

3. We reserve proprietary rights and copyrights for all drawings, calculations and other documents. They may only be disclosed to third parties with our express prior agreement in writing.

4. Our Sales Conditions shall also apply for all future business dealings with the purchaser.

II. Prices and Payment

1. In the absence of special agreements, the prices shall be ex works including loading at our premises but exclusive of packaging and unloading.

2. Our invoices are payable within 30 days from the invoice date due net, unless agreed otherwise.

3. The purchaser shall have the right to withhold payments or to offset them against counterclaims only if his counter-claims have been legally established and acknowledged by us and are undisputed. Furthermore, he shall only be entitled to exercise his right of retention if his counterclaim is based on the same contractual relationship.

4. The statutory provisions on payment default shall remain unaffected.

5. The quoted prices are net prices. The statutory VAT shall be added to them.

6. Subject to deviating agreements, we reserve the right to adjust the prices based on the respective contract which are essential for the price calculation at reasonable discretion until the delivery of the goods if the costs for i.e. the supply of energy, raw material or primary material increase.

III. Reservation of Proprietary Rights

1. The goods shall remain our property until full payment has been received including ancillary claims, claims for damages and encashment of cheques and drafts. The reservation of proprietary rights shall also apply when individual claims of ours are included in an open account and the balance is struck and accepted. If the reserved goods are processed by the purchaser into a new moveable object, the processing is done for our benefit and without any obligations arising on our part from it. The new object shall be our property. In case of processing, mixing or blending with goods that are not our property, we acquire co-ownership of the new object in the proportion of the invoice value of the reserved goods to the total value. The purchaser is only entitled to resale, further processing or insertion of the reserved goods by taking into consideration the following provisions and providing that the claims are really transferred onto us in accordance with our General Terms and Conditions.

2. The purchaser's power to sell, process or install reserved goods in the

ordinary course of business shall end with our revocation as a result of an enduring deterioration of the purchaser's financial situation, at the latest, however, with his default or with the application for or the initiation of insolvency or composition proceedings. The purchaser shall then transfer the outstanding debits with all ancillary rights from the resale of the reserved goods to us – including possible account balance claims. If the goods were processed, mixed or blended, or if we have acquired co-ownership of them in the amount of the invoice value, we shall be entitled to the outstanding purchase price in proportion to the value of our claims to the goods. If the purchaser has sold the outstanding debits as part of non-recourse factoring, our claim shall become due immediately and the purchaser shall transfer the claim towards the factor that takes its place to us and redirect the profits to us directly. We already accept this act of transfer. The purchaser is authorised to collect the transferred outstanding debits as long as he fulfils his payment obligations. The collection authorisation terminates in case of revocation, at the latest, however, in case of default of the purchaser or with a considerable deterioration of his financial situation. In this case, the purchaser already authorises us to inform the buyer of the transfer and to collect the outstanding debits ourselves. The purchaser is obligated to deliver an exact list of the outstanding debits due to the purchaser on our request with the names and addresses of the buyers, the amounts of the individual outstanding debits, invoice dates etc. and to give us all the information necessary for the assertion of the transferred claims and to authorise the verification of this information. If the value of the existing securities exceeds all claims by more than 20%, we are obligated to release securities of our choice to this value on request of the seller or a third party that is affected by the excessive securities. The reserved goods or transferred claims must not be pledged or otherwise used as collateral. In case of attachment, the purchaser has to inform us immediately, giving us the bailee's details. If we take the delivery item back, based on the reservation of proprietary rights, this only constitutes a cancellation of the contract if we expressly declare this. We are entitled to satisfy our claims from the private sale of the reserved goods we have taken back. The purchaser shall store the reserved goods for us free of charge. He must insure them against common dangers such as fire, theft and water to the customary extent.

IV. Place of Fulfilment and Jurisdiction

The place of fulfilment is Burbach the place of jurisdiction for both parties is Siegen. We are also entitled to sue the purchaser at his general place of justice.

B. Fulfilment and Delivery

I. Delivery Period

1. The term of delivery starts with the date of our order confirmation, not, however, before complete clarification of all details of the order. The same shall apply for the delivery date.

2. The observance of the term of delivery is subject to correct and timely self-supply.

3. If the purchaser does not fulfil his contractual duties on time – including his duty to cooperate or collateral duties – such as the opening of a letter of credit, the supplying of German and foreign certificates, the making of an advance payment or similar, we are entitled to extend our term and date of delivery appropriately – without prejudice to our rights from the purchaser's default – according to the requirements of our production process.

4. For the observance of the terms and dates of delivery, the time of dispatch ex works is decisive. If the goods cannot be dispatched on time through no fault of ours, the terms and dates of delivery shall be considered observed.

5. If the non-observance of the delivery period is due to force majeure, industrial action or other events which are beyond our control, the delivery

period shall be extended appropriately. We shall inform the purchaser of the beginning and the end of such circumstances as soon as possible.

II. Dispatch, Transfer of Risk

1. We designate the forwarding agent or carrier. Other agreements require the written form.

2. If the shipping and forwarding of goods is delayed for a reason for which the purchaser is responsible, we are entitled, at the expense and risk of the purchaser, to store the goods at our reasonable discretion, take all measures considered suitable for the preservation of the goods and to invoice the goods as delivered. The same shall apply if goods that are ready for dispatch are not called forward within 4 days. The legal stipulations on default of acceptance shall remain unaffected.

3. In case of damages in transport, the purchaser needs to arrange for an ascertainment of facts to be carried out by the responsible department. Possible return transports are arranged by us.

4. With the handing over of the goods to the forwarding agent or carrier, no later, however, than when the goods leave the factory or warehouse, the risk shall be transferred onto the purchaser.

5. Part deliveries are admissible to a degree that the purchaser can be reasonably expected to accept.

III. Warranty

1. If the delivered goods already reveal a defect of quality before the transfer of risk, we shall remedy the defect at our discretion or deliver goods that are free of defects (supplementary performance). The purchaser has no further claims with the exception of the claims in Section C (Liability). Parts that have been replaced become our property.

2. The purchaser has to give us the necessary time and opportunity for carrying out all the rectifications of defects and replacement deliveries that we deem necessary; otherwise we are free of liability and the consequences arising from it.

3. The period of warranty is 12 months from delivery. This is based on single-shift operation. The period of time is reduced proportionally for multi-shift operation.

4. The purchaser has to give us the opportunity to satisfy ourselves of the defect and especially to make the rejected goods or samples of the same available. Any necessary return transports are organised by us. Any additional costs that arise due to non-observance of the above will be charged to the purchaser. If any notification of defect proves to be unjustified, the costs arising will be charged to the purchaser.

5. No warranty shall be accepted especially in the following cases: unsuitable and improper use, faulty assembly or commissioning by the purchaser or third parties, natural wear and tear, faulty or negligent treatment, improper maintenance, unsuitable operating equipment, faulty construction work, unsuitable building ground, chemical, electrochemical or electrical influences – unless we are responsible for them.

6. If the purchaser or a third party carries out repairs in an improper manner, we shall not be liable for consequences arising therefrom. The same all apply for changes to the delivery item that are carried out without our prior consent.

7. After an agreed acceptance has been carried out, any notification of defects that could have been made during this acceptance shall be excluded.

C. Liability

1. We shall only be liable for damages if:

a) if the liability is legally obligatory under relevant law, such as e.g. in accordance with the Product Liability Law or in cases of injury to life, limb and health.

b) we have culpably breached an essential contractual duty (cardinal duty) or a warranty or

c) the damage was caused by gross negligence or intent on our part.

2. In all other cases, our liability for damages is excluded, independently of the legal basis. In particular, we do not accept any liability for indirect damages, loss of profit or other financial losses of the purchaser.

3. In any case, our liability is limited to those damages which we were reasonably able to foresee or should have been able to foresee due to circumstances and facts accessible to us at the time of the conclusion of the contract. This limitation to the liability shall not apply in the cases described in Section 1, Subsection a, Clause C (Liability)

4. The exclusion and/or limitation of liability in accordance with the above paragraphs shall also be applicable for the personal liability of our employees and subcontractors.

D. Other Provisions

I. Export Certificates

In case the goods are to be delivered to another EU country, the purchaser has to advise us of his VAT ID under which he pays the tax on imports within the EU before the sale is carried out. Otherwise, the purchaser shall have to pay the statutory VAT amount that the seller is due to pay for the deliveries.

II. Applicable Law

The law of the Federal Republic of Germany shall apply, i.e. excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

III. Important Notes

1. The products must only be used in accordance with the "Accident Prevention Regulations", the "Guidelines for the Intended and Proper Use of Industrial Trucks" and the user manual and inspection instructions by the lift truck manufacturers.

2. If the purchaser, the operator or the user carries out any changes to the delivered goods (mechanical adaptation, welding etc.), no matter of what nature, all warranty, liability and guaranty shall become invalid.

3. If any welding/drilling needs to be carried out on the products, we shall refer to the relevant regulations which we shall forward to you on request. For the dimensioning/calculation of screw-fastened forks, the cross-section reduction and the notch effect have to be taken into account.

4. Custom-made products are non-returnable. No refund is made.

5. The purchaser is obligated to document the distribution and the destination of the products after their delivery to the end customer in a way that enables us to carry out a product recall if necessary.

6. If necessary, documentation in German is included in the scope of delivery. In case of resale to other countries, the responsibility for the documentation in the relevant language of the country lies with the purchaser.