

Standard Terms and Conditions of Sale and Delivery 07 / 2020

1. General Scope of Application

- Our Standard Terms and Conditions of Sale and Delivery apply towards entrepreneurs, legal entities governed by public law or government-owned funds under public law ("Customer").
- Our supplies, services and offers are exclusively based on these Standard Terms and Conditions of Sale and Delivery. Unless otherwise agreed in writing, all current and future business relationships between us and the Customer regarding services and supplies provided by us shall be governed by our Standard Terms and Conditions of Sale and Delivery.
- By placing an order or by accepting delivery the Customer accepts the application of these Standard Terms and Conditions of Sale and Delivery. Conflicting general terms and conditions of purchase or order confirmations by the Customer or third parties shall not apply, even if we do not object to them separately. General terms and conditions of purchase of the Customer shall only apply if and to the extent we have expressly agreed to their application in writing.
- Unless expressly agreed otherwise, any legal relationship between VTS and the Customer shall exclusively be governed by the written contract between us, which shall include these Standard Terms and Conditions of Sale and Delivery.

2. Conclusion of Contract, Validity Period

- Unless provided otherwise, our quotations shall be subject to change and non-binding. They shall lapse no later than 30 days from the date of issue. The Customer's orders shall not be deemed accepted until they have been expressly confirmed by us in writing (which may include fax or e-mail) or until we have dispatched the goods to the Customer.
- By placing a purchase order, the Customer declares his binding intention to purchase the goods. The Customer shall be bound to its purchase order for 3 weeks from the date of the purchase order. We are entitled to accept the offer within this period of time. Receipt of our acceptance shall be relevant for the adherence to this time limit. Such acceptance may be declared by either written order confirmation (which may include fax or e-mail) or by delivering the goods to the Customer.
- If the Customer orders electronically, we shall confirm receipt of the order. Such confirmation of receipt shall not constitute an order confirmation or a binding acceptance of the offer to enter into a contract made by submission of the purchase order.
- Any illustrations, data, measurements and weight specifications used in the quotation shall be approximate only, unless the use of the goods for the purpose contemplated by the contract requires exact conformity. Such specifications are not guaranteed to precisely match the descriptions, but are merely indicative of the characteristics of our deliveries, service or offer. Variations in the specifications which are customary, required by law, or constitute improvements, and the replacement of components by comparable components, shall be allowed, to the extent this is acceptable for the Customer and does not adversely affect the purpose contemplated by the contract.
- Any side agreements and amendments to the respective contract and/or to these Standard Terms and Conditions of Sale and Delivery shall only be effective if made in writing by personal signature. This requirement may only be waived in writing unless otherwise agreed. Fax and e-mail shall comply with such written form requirement if they transmit a copy of an original, signed document.
- Dissenting, conflicting or supplementing understandings, side agreements, promises and any other commitments made by our representatives and employees, other than the managing director, authorised representative or authorised agent, shall only be valid if they are confirmed by us in writing.

3. Delivery and Time of Delivery, Passing of Risk

- Our obligation to deliver properly and timely is subject to us receiving adequate supplies from our suppliers unless we are responsible for our supplier's inaccurate delivery or delay in delivery.
- Unless a delivery period or delivery date is expressly agreed as binding, the delivery periods and delivery dates shall be indicative and non-binding. Unless otherwise expressly agreed, delivery periods shall commence at the date of the order confirmation provided that the Customer has fulfilled its obligations in a timely and proper manner.
- We shall be released from any obligation to deliver or perform within a particular time period in the event of default or failure or delay as a result of a force majeure. Force majeure shall mean a cause or event that is not foreseeable or is otherwise outside of our control, including acts of God, labour strikes, lockouts, raw material scarcity, difficulties in material or energy procurement, delay of transport, business interruption, riot, war, epidemics, pandemics or government measures (such as the restriction or temporary ban of operations or the closure of borders), unless we or one of our suppliers is responsible for such occurrence. If the end of the force majeure event cannot be foreseen and such event substantially impedes or precludes delivery or performance under the contract, then each party shall be entitled to rescind the contract (in whole or in part). If the end of the force majeure event can be foreseen, then times and dates for delivery or performance shall be extended or rescheduled, as applicable, by the length of such disturbance plus an appropriate additional preparation time; we shall notify the Customer about such disturbance in a reasonable manner.
- In case of a delay in delivery, the Customer shall only be entitled to rescind the contract if we are responsible for the delay and an appropriate cure period set by the Customer has expired to no avail.
- We reserve the right to deliver the goods in more than one instalment if, according to the purpose of the contract, such partial delivery is in the Customer's interest and the Customer does not incur additional costs or expenses (unless we agree to bear such additional costs ourselves).
- If the contract provides that the Customer shall collect the goods, the risk of damage to or loss of the goods shall pass to the Customer at the latest upon handover to the Customer or third parties authorized by the Customer. If the contract of sale involves shipment of the goods, the risk shall pass to the Customer when the goods are handed over to the forwarding agent, carrier or any other person appointed to transport the goods to the Customer. The commencement of the loading process shall constitute the handover. If the handover or the shipment of the goods is delayed and the Customer is responsible for the delay, the risk shall pass to the Customer on the date the goods were ready for shipment or handover and the Customer was notified thereof. This clause 3.6 shall also apply to partial deliveries or partial performance within the meaning of clause 3.5 of these Standard Terms and Conditions of Sale and Delivery.
- If the handover or shipment of the goods is delayed and the Customer is responsible for the delay or should the Customer fail to perform any of its obligations to co-operate, we reserve the right, without prejudice to any other rights or remedies, to either store the goods at the Customer's risk and expense, or to rescind the contract in accordance with the statutory provisions.

4. Packaging

- Deliveries shall include the packaging unless the packaging will be expressly provided on a loan basis.
- We shall retain title to all packaging expressly provided on a loan basis. Such packaging shall be handled with care and must not be used for any other purpose than storage of the delivered goods. The packaging shall be returned by the Customer at its own expense (shipping prepaid) within 2 weeks of delivery. The Customer shall be liable for any damage caused by a breach of these obligations unless the Customer can prove that it was not responsible for the damages.
- Small volumes will be subject to surcharges. Any delivery volume lower than 750kg per purchase order shall constitute a small volume.

5. Terms of Payment, Default, Deterioration of Financial Status

- Unless a price has been agreed in writing, we reserve the right to determine the price according to our price list applicable on the date of delivery.
- We reserve the right to adjust our prices if and to the extent any costs of production, turnover or transportation (including public charges) decrease, increase or occur for the first time. We will substantiate such changes upon the Customer's request without undue delay. Prices which include shipping costs are based on the assumption of normal traffic conditions upon shipment.

3. Unless otherwise agreed, prices shall be ex works (EXW Incoterms® 2020). Our prices are listed in Euros and exclude VAT, duties, levies and other charges. VAT shall be charged as a separate line item on the invoice and apply as applicable on the date of the invoice.

4. Unless otherwise agreed in writing, our invoices shall be due for payment net and without any deductions within 30 days after receipt of the invoice by the Customer. Payment by the Customer shall be made without deductions for bank charges or other fees to our bank account.

5. Payments by the Customer shall not be considered made until payment is received by us in cleared funds.

6. If the Customer is in delay of payment, we reserve the right to demand late payment interest at the applicable statutory rate of 9 percentage points above the base rate (cf. Sec. 247 BGB, German Civil Code). We reserve the right to claim additional damages caused by the late payments. Maturity interest in terms of Sec. 353 HGB (German Commercial Code) shall apply even if we agree to an extension of the payment term.

7. If the Customer is in delay of payment or if we become aware of circumstances indicating that the Customer's creditworthiness is questionable (e.g. application to commence insolvency proceedings), we reserve the right to suspend outstanding deliveries or performance until payment of the accounts receivable and/or to make any future deliveries or performance only against advance payment or the provision of security. If the Customer fails to provide such security or to make advance payments prior to the expiry of a reasonable grace period, we reserve the right to rescind any or all of the affected contracts, in whole or in part. Our right to bring additional claims shall remain unaffected.

8. We reserve the right to issue separate invoices for each instalment in terms of clause 3.5 of these Standard Terms and Conditions of Sale and Delivery.

9. The Customer shall be entitled to declare a set off against any of our claims only if the counterclaim is undisputed, has been accepted by us, has been determined by a final and binding judgment, or if it is based on the same contractual relationship as our claim (synallagmatic counterclaim).

10. The Customer shall be entitled to exercise a right of retention only if the Customer's claim is based on the same contractual relation and either undisputed, has been accepted by us, or has been determined by a final and binding judgment.

6. Warranty

1. Warranty claims of the Customer require an inspection of the goods without undue delay upon delivery to the Customer or a third-party recipient nominated by the Customer, and the issuance of a written notice to us of any discoverable defects ("Defects Notice"). In the event of latent defects, the Customer shall provide us with a written Defects Notice without undue delay upon their discovery.

2. The Customer shall bear the burden of proof with regard to the defect itself, the defect not being discoverable during inspection, the point in time at which the defect was discovered and the timeliness of the Defects Notice.

3. In case of a Defects Notice, we reserve the right to examine the allegedly defective goods. The Customer shall grant us the time and opportunity required for such examination. We may also require the Customer to return the allegedly defective goods to us at our expense. Furthermore, we shall be entitled to require the Customer to provide evidence of the good being defective. Should the Customer's Defects Notice turn out to be unjustified (and should the Customer have been aware thereof prior to the issuance of the Defects Notice or was negligently unaware thereof), the Customer shall reimburse us for all expenses incurred in this regard, e.g. travel expenses or shipping costs.

4. An objection made in respect of one delivery shall not entitle the Customer to reject any other delivery, whether under the same or another contract.

5. The limitation period for warranty claims shall be 1 year from the passing of risk. This limitation period shall not apply in relation to recourse claims in terms of Sec. 445a, 445b, 478 BGB (German Civil Code) or to damage claims for personal injury or death, or if we or our agents have caused a breach of duty intentionally or with gross negligence. In such cases the limitation period shall be determined by the statutory provisions.

6. The specification of the goods shall be exclusively determined by the specific written agreement with the Customer about the characteristics, descriptions and specifications of the goods. Any quality guarantees need to be expressly identified as such and agreed upon in writing. Any public statements, promotions or advertisements, as well as sales catalogues, price lists or any other information material provided to the Customer, or any other product description, shall under no circumstances constitute a guarantee of any specific quality of the goods.

7. In case of a justified and timely Defects Notice, the Customer shall be entitled to claim subsequent performance within the limitation period, while we shall be entitled to determine the remedy at our discretion, either by repairing the defect or, alternatively, by delivering a non-defective replacement product (together the "Subsequent Performance"). Any additional costs incurred by us for remedying the defect which we would not have incurred but for the fact that the Customer shipped the products to a location other than the location at which we delivered the products to the Customer shall be borne by the Customer. Moreover, we may also remedy the defect by means of a *pro rata* reduction of the purchase price. The Customer shall grant us a reasonable time and opportunity as is needed for Subsequent Performance. Claims arising from supplier recourse (§§ 445a, 445b BGB) shall be excluded if the defective goods have been further processed by the Customer or third parties.

8. If Subsequent Performance fails, or would be unreasonable for the Customer, or if we refuse to provide Subsequent Performance in accordance with Sec. 439(4) BGB (German Civil Code), the Customer shall, at his discretion, be entitled to rescind the contract in accordance with the statutory provisions, demand a reduction in the purchase price and/or claim damages pursuant to paragraph 9 of these Standard Terms and Conditions of Sale and Delivery. Alternatively, the Customer shall be entitled to claim reimbursement of its futile expenses.

9. In case of an agreement to deliver goods which shall be in conformity with a specific product type, any product data is based on average values. Deviations within the standard tolerance shall be permitted. Please note that deviations, variations and/or other differences may be substantially greater in relation to overstock materials, industry qualities, substandard, off-grade or lower qualities etc., especially in the case of regenerated or recycled products.

10. If the Customer has neglected to secure rights of recourse against any third party (e.g. fact finding by railway authorities, short landed certificates etc.), its warranty claims shall be excluded.

11. Any action that we take to mitigate damages shall under no circumstance be construed as an admission of an alleged defect. Negotiations concerning alleged defects shall not prevent us from raising the defence that a Defects Notice was late, unjustified or insufficient on other grounds.

12. The Customer shall not be entitled to rescind the contract or to claim damages in lieu of performance in case of a non-material deviation of the goods from the agreed specifications.

7. Information

Any information given to the Customer about processing and application possibilities, any technical advice given to the Customer or any other statements made to the Customer by us or the manufacturer shall be given or made in good faith but shall be non-binding and without any liability. This shall not apply if the information given was wrong as a result of gross negligence or wilful misconduct.

8. Retention of Title

1. The delivered products shall remain our property until any claim for payment arising from our business relationship with the Customer have been settled in full ("Collateral"). In the case of multiple claims and/or current accounts, the retention of title shall secure the balance in our favour even if individual goods have been paid.

2. Should the Customer be in default with the performance of material obligations such as payment, we reserve the right to rescind the contract in accordance with relevant statutory provisions. Notwithstanding any other rights we may have, we may also request the return of the Collateral. Any transport costs arising from such return shall be borne by the Customer. Upon return we are entitled to realise the Collateral. After deduction of the costs for the realisation of the Collateral, the revenue from the realisation shall be offset against the Customer's debts.

3. The Customer shall treat Collateral with due care as long as it is our property. The Customer shall reasonably insure the Collateral at its original value, provide us with proof of such insurance and assign to us any claims arising under such insurance.

4. The Customer shall be entitled to process and resell the Collateral in the ordinary course of business as long as he is not in delay of payment.

a) Should the Collateral be processed by the Customer, such processing shall be carried out in our name and on our account and we shall directly acquire ownership of the new product. If the processing combines materials of various owners or if the value of the processed item is higher than the value of the goods, we shall acquire co-ownership of the new product, whereas the proportion of ownership shall be determined by the ratio of the invoice value of the Collateral compared to the overall value of the new item. If we acquire no such co-ownership, the Customer hereby transfers to us as security its future (co-) ownership interest in the new product – in the ratio mentioned above – and store the new product for us free of charge.

b) Should the Collateral be mixed with other products, we shall acquire co-ownership of the new product in the ratio of the value of the Collateral to the other products at the time of mixing. Should the mixing of the goods occur in such manner that the Customer's products constitute the main product, it shall be deemed to be agreed that the Customer assigns a proportionate co-ownership interest to us. The Customer shall store such co-ownership interest for us free of charge.

c) The Customer hereby assigns to us as security any receivables against the buyer arising from the resale of the Collateral – in case of co-ownership of the Collateral limited to the share of our co-ownership; we hereby accept such assignment. Should the Customer sell the Collateral after processing or mixing with other products, the assignment of the receivables shall be made only with respect to the amount invoiced for the Collateral. The Customer is granted the revocable authorisation to collect the claims assigned to us in trust in the Customer's own name. We may revoke such authorisation and the right to resell the Collateral if the Customer is in default with the performance of material obligations, such as payment, or if enforcement proceedings are levied against the Customer, or if an application to commence insolvency proceedings concerning the assets of the Customer is granted or rejected due to a lack of assets; we shall be entitled to collect the respective claim ourselves in case of revocation.

5. The Customer shall at all times upon request provide us with any information about the Collateral or the receivables assigned to us hereunder. Granting a pledge on the Collateral, transferring ownership of the Collateral to third parties as security, or any other transaction which might jeopardise our ownership in the Collateral shall be prohibited. If and to the extent third parties access the Collateral, in particular by way of seizure, the Customer shall disclose our ownership and notify us in writing without undue delay in order to enable us to enforce our ownership rights. If and to the extent the third party is unable to reimburse us for the legal costs incurred in this regard, the customer shall be liable for such costs and expenses.

6. If and to the extent the realisable value of the collateral granted to us exceeds all of our secured claims by more than 10%, we shall be obliged to release Collateral and entitled to select the Collateral to be released.

9. Liability

1. Our liability for damages shall be limited as follows:

a) damages caused by a slightly negligent breach of a material contractual obligation, we shall only be held liable up to the amount of the foreseeable damages typical for such kind of contract. A material contractual obligation is an obligation the proper fulfillment of which (i) is crucial for the performance of the contract, or (ii) the Customer has relied upon, and was entitled to rely upon.

b) We shall not be liable for damages caused by any slightly negligent breach of a non-material contractual obligation.

2. Such limitation of liability as set out in the preceding clause 9.1 of these Standard Terms and Conditions of Sale and Delivery shall not apply to any mandatory statutory liability (in particular under the German Product Liability Act), any other negligence causing personal injury or death, if and to the extent that we have assumed a guarantee, or for the absence of any guaranteed characteristics.

3. The Customer shall take all reasonable steps necessary to avoid and mitigate its damages.

4. Such limitation of liability as set out above shall also apply in case of damages caused by a breach of contract by our management board, legal representatives, employees or other agents.

10. Indemnification

If the Customer sells the delivered goods unmodified, modified, or after mixing them with other goods, the Customer shall indemnify us against any product liability claims of third parties and infringements of intellectual property rights if and to the extent the Customer caused the damage itself and/or would be directly liable to the third parties.

11. Confidentiality

1. Trade and business secrets provided and/or disclosed to the respective other party in connection with the business relationship, whether orally, in writing or in any other form, and any knowledge or conclusion derived therefrom (together "Confidential Information") shall be treated as confidential and shall not be used for any purpose other than the contractually agreed purposes. This shall apply regardless of whether such Confidential Information has been identified as "confidential" or "secret" or otherwise as information that needs to be kept secret.

2. The above confidentiality obligation shall not apply to any information which (a) was already known to the Customer at the time of its first disclosure by us without being subject to any confidentiality obligation; or (b) the Customer has received legally and without any confidentiality obligation from a third party; or (c) was already in the public domain at the time of its first disclosure to the Customer by us or, subsequently came into the public domain without the Customer's fault; or (d) as evidenced by the Customer, has been independently developed by the Customer without use of any Confidential Information; or (e) must be disclosed as a matter of law, provided that the Customer promptly informs us about such disclosure and takes all reasonable efforts to ensure that as little Confidential Information as possible is disclosed.

3. The burden of proof for these exceptions shall rest with the Customer.

4. Any Confidential Information provided by us as well as any copy thereof made by the Customer has to be returned to us or destroyed upon request.

12. Assignment

The Customer may assign the rights arising from the parties' contractual relationship to third parties only with our written consent. Sec. 354a HGB (German Commercial Code) shall remain unaffected.

13. Miscellaneous

1. If one or more provisions of these General Terms and Conditions of Sale and Delivery turn out to be invalid or become invalid in whole or in part, the validity of the remaining provisions shall remain unaffected. The wholly or partially invalid provision shall be replaced by such valid pro-vision which comes closest to the economic purpose of the invalid pro-vision. The same shall apply in the event of an omission.

2. Place of performance and exclusive venue for any and all disputes arising from or in connection with the contracts entered into between us and the Customer and/or these General Terms and Conditions of Sale and Delivery shall be Rottweil, Germany. We shall be entitled, however, to take legal actions against the Customer before any other competent court.

3. The sales contracts, these Standard Terms and Conditions of Sale and Delivery and our entire legal relationship with the Customer shall be governed by the laws of the Federal Republic of Germany, but excluding all references to other jurisdictions and international treaties. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

Note:

The Customer acknowledges that, we store all data deriving from the contractual relationship for the purpose of data processing in accordance with the legal requirements (Art. 6 Sec. 1 b) GDPR) and we reserve the right to transmit the data to third parties (e.g. insurances) to the extent which is necessary to fulfil the contract.

Since 1 January 2022, we, as a final distributor of products, are obliged to inform our customers (who are end customers) about the ways to return the packaging of the products delivered by us (cf. Section 15 (1) German Packaging Act – "VerpackG"). We hereby offer our customers (who are end customers) to return such packaging to us. For details, please contact our sales department.