

## Standard Terms and Conditions of Sale and Delivery 01/2019

### 1. General Scope of Application

1. Unless otherwise agreed in writing, all current and future business relationships between VTS GmbH ("VTS") and the Customer regarding services and supplies provided by us shall be governed by our Standard Terms and Conditions of Sale and Delivery.
2. Our supplies, services and offers are exclusively based upon the following Standard Terms and Conditions of Sale and Delivery.
3. By placing an order or by accepting delivery the Customer accepts the following Standard Terms and Conditions of Sale and Delivery. Conflicting 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. They shall only apply if and to the extent we have expressly agreed to their application in writing.
4. 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. Individual agreements made with the customer in individual cases take precedence over these General Terms and Conditions of Sale and Delivery. A written contract or written confirmation by us is decisive for the content of such agreements.

### 2. Conclusion of Contract, Validity Period

1. 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.
2. By placing an order, the Customer declares his binding intention to purchase the goods. The Customer shall be bound to his order for three (3) weeks from the date of the 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.
3. If the Customer orders electronically, we shall confirm receipt of the order. Confirmation of receipt of the order shall not constitute binding acceptance of the order. As the case may be, confirmation of acceptance of the order may be given at the same time as the confirmation of receipt.
4. Any data, measurements and weight specifications used in the quotation shall be approximate only, unless the use 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 supply, service or offer. Variations in the specifications which are customary, required by law, are improvements or are comparable replacement components shall be allowed, as long as they do not affect the purpose contemplated by the contract.
5. Title to and copyright in all sales documentation (including illustrations, cost calculation, and drawings) shall remain with us. All such documents shall not be disclosed to third parties without our prior written consent and shall be returned to us upon request.
6. Any side agreements and amendments to the contract and to these Standard Terms and Conditions of Sale and Delivery shall only be effective if made in writing. This requirement may only be waived in writing. Fax and e-mail shall comply with such written form requirement if they transmit a copy of an original, signed document.
7. Dissenting, conflicting or supplementing understandings, side agreements, promises and any other commitments made by our representatives and employees, other than the managing director (*Geschäftsführer*), authorised representative (*Prokurist*) or general agent (*Handlungsbevollmächtigter*), shall only be valid if they are confirmed by us in writing.

### 3. Delivery and Time of Delivery, Passing of Risk according to Incoterms® 2010

1. Our obligation to provide proper and timely delivery is subject to us receiving adequate supplies from our suppliers.
2. Unless a period or a date is expressly fixed in writing, the dates and times we indicate for delivery shall be non-binding. Unless otherwise expressly agreed in writing, periods for delivery shall begin at the date of the order confirmation.
3. We shall be released from any obligation to deliver within a particular time period in the event of default or failure as a result of a force majeure. Force majeure shall mean a cause or event that is not reasonably 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, hold-ups, riot or war, 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 an appropriate way.
4. In the event 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 grace period set by the Customer has expired without the delivery having been made.
5. We reserve the right to deliver the goods in more than one instalment for good reason if and to the extent that such partial delivery is appropriate for the Customer. This will apply, in particular, where:
  - for the Customer, the delivery in instalments satisfies the purpose contemplated by the contract;
  - delivery of the outstanding goods is provided; and
  - no additional expenses or costs are incurred by the Customer (unless we agree to bear such costs ourselves).

6. 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 upon handover to the Customer or third parties authorized by the Customer. If the contract of sale involves shipment of the goods, the risk in the goods passes to the Customer when the goods are handed over to the first carrier, haulier or any other person appointed to transmit the goods to the Customer. If the Customer should be in default of taking delivery, the risk shall pass to the Customer upon such default. If the goods are to be collected by the Customer, and the Customer is responsible for a delay in handover, the risk in the goods shall pass to the Customer on the date he is notified of the goods being placed at his disposal. This sub-paragraph 6 shall also apply to partial deliveries.
7. If the Customer should be in default of taking delivery or should fail to perform any of his obligations to co-operate, we reserve the right, without prejudice to any other right or remedy, to either store the goods at the Customer's risk and expense, or to rescind the contract in accordance with legal requirements.
8. Shipments will be insured against transport risks only upon request and at the expense of the Customer.

### 4. Packaging

1. Packaging shall be included with the goods, unless it is expressly provided on a loan basis.
2. We shall retain ownership of all packaging expressly provided on a loan basis. Such packaging items are to be handled with care and may not be used for any other purpose than storage of the delivered goods. The Customer shall return such packaging items free of carriage within two (2) weeks of delivery. The Customer shall be liable for any damage caused by a breach of his obligations under this paragraph, unless he can prove that he should not be held responsible for such damages.
3. Delivery of small amounts will incur additional charges. A small amount under this contract is any amount less than 750 kg per order.

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

1. 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.
2. If any costs of production, turnover or transportation (including public charges) should decrease, increase or occur for the first time, we reserve the right to adjust our prices. On demand, we shall substantiate such changes to the Customer without 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® 2010), in Euros, excluding VAT, duties, levies and other charges. VAT, as applicable on the date of the invoice, shall be calculated and charged separately (as a separate item on the invoice).
4. Unless otherwise agreed in writing, each invoice is due for payment net (without any further deductions) within 30 days after receipt of the invoice by the Customer. Payments by the Customer shall be made, without deductions for bank charges or other fees, into our designated bank account.
5. Payments by the Customer shall not be considered made until such payment is received by us in cleared funds.
6. Upon expiration of the payment term (sub-paragraph 5.4) the Customer shall be in default of payment, without the need for a prior reminder. In this case we reserve the right to demand interest for such delay at the applicable statutory rate of nine (9) per cent above the base interest rate (cf. Sec. 247 BGB, German Civil Code). This shall not affect our right to claim additional or further damages due to late payments. Our right to claim interest from the due date under Sec. 353 HGB (German Commercial Code) remains unaffected, regardless of any agreed extension of the time for payment.
7. If the Customer should be in delay with payment or if we become aware of circumstances indicating that the Customer's creditworthiness is questionable (e.g. initiation of insolvency or bankruptcy proceedings), we reserve the right to withhold any outstanding deliveries or performance and/or to make any further deliveries or performance conditional on the Customer providing payment in advance or the provision of security, until all outstanding payments are made in full. If the Customer fails to provide such security or to make payments in advance, and following 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. This shall not exclude our other legal rights, which are reserved.
8. We reserve the right to issue separate invoices for each instalment, as defined in sub-paragraph 3.5.
9. The Customer shall only be entitled to claim a setoff if and to the extent that we have admitted his right to do so, or the matter has been finally adjudicated. In the event of defects, the customer's counter-claims remain unaffected.
10. The Customer shall only be entitled to exercise a right of retention if and to the extent that we have admitted his right to do so or the matter has been finally adjudicated. In either case, this shall only apply in relation to the same contract as our claim for payment.

### 6. Warranty

1. The Customer shall inspect the goods as soon as they are delivered to him or any appointed third parties. If there should be any defects, the Customer shall notify us in writing and without undue delay, otherwise he shall not be entitled to raise any claim in relation to such defects. In the event of latent defects, the Customer shall notify us in writing upon their discovery without undue delay.
2. The Customer's compliance with the above time-limits will be satisfied provided that the required notification is dispatched in time. The Customer shall bear the burden of proof with regard to the defect itself, the defect not being perceptible during inspection, the point at which the defect was identified, the notification having been dispatched in time and its receipt.

3. In the event of such notification of defect, we reserve the right to examine the relevant product. The Customer shall grant us the time and opportunity required for such examination. We reserve the right to also require that the Customer returns the relevant product to us at our expense. We shall further be entitled to request that the Customer provides evidence of the product's defectiveness. Should the Customer's notification of defect prove to be unjustified (and provided that the Customer was aware of this prior to the notification or was negligent in failing to be aware of this), the Customer shall reimburse us for all costs incurred in this regard, e.g. travel expenses or shipping costs.

4. If an objection is made in relation to one delivery, the Customer shall not be entitled to reject any other delivery, whether under the same contract or otherwise.

5. The Customer's right to bring claims for defects shall be limited to one (1) year from the delivery of the goods.

6. The limitation period in relation to claims of recourse under Sec. 445a, 445b BGB (German Civil Code) shall remain unaffected. The statutory limitation period shall apply to any other damage claims by the Customer, except claims for defects of goods as well as rights arising from such defects which have been concealed in bad faith or caused intentionally.

7. The product's quality required by the contract shall be exclusively determined within the specific written agreements concerning characteristics, descriptions and specifications of the goods. A particular quality shall only be agreed if it has been expressly specified in writing. Information contained in public statements, promotions or advertisements, sales catalogues, price lists or any other source of information provided to the Customer, as well as any other product description, shall under no circumstances constitute a guarantee of any specific quality of the goods.

8. In the event of a product defect, we reserve the right to remedy the defect at our option, either by repairing the defect or, alternatively, by delivering a substitute product free from defects (together, "**Subsequent Performance**"). Either remedy shall be provided at no additional costs to the Customer. 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 to the purchase price. The Customer shall grant us a reasonable time and opportunity as is needed for Subsequent Performance.

9. If Subsequent Performance fails, or is shown to be an unreasonable solution 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 option, be entitled to rescind the contract in accordance with the statutory provisions or to demand a reduction in the purchase price. Further claims of the Customer for compensation or reimbursement of expenses due to defects only exist in accordance with sub-paragraph 9 of these General Terms and Conditions of Sale and Delivery and are otherwise excluded.

10. 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. We 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.

11. Any provision we take to mitigate damages shall under no circumstance be taken to constitute an admission of defects in the goods. Any negotiation subsequent to a defect notification shall not exclude our right to raise objections on the basis of the defect notification having been late, unjustified or insufficient.

12. If a claim relating to a defect in the goods is merely based on an irrelevant deviation of the goods from the agreed specifications, the Customer shall not be entitled to rescind the contract or to claim damages in lieu of performance.

## 7. Information

Any information on possible ways of future manufacturing and application, technical consulting and other statements we or the manufacturer give to the Customer shall be made in good faith, but will not be binding on VTS or cause VTS to incur any liability for such information, unless the information is wrong as a result of gross negligence or intentionally.

## 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 has been fully made ("**Products subject to Retention of Title**"). In the case of current accounts, this retention of title shall serve as security for our claim for payment to which we are entitled in each case.

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 Products subject to Retention of Title. Any transport costs arising from such return shall be borne by the Customer.

3. The Customer shall treat the Products subject to Retention of Title with care as long as they are subject to retention. The Customer shall insure the Products subject to Retention of Title as appropriate, provide us with proof of such insurance and assign to us any claims arising under such insurance.

4. The Customer shall be allowed to transform the Products subject to Retention of Title within the ordinary course of business and to resell the transformed products.

a) Should the Products subject to Retention of Title be transformed by the Customer, such transformation shall be carried out in our name and on our behalf. Furthermore, we shall acquire the sole ownership interest or - if the transformation is carried out using the materials of several owners or if the value of the transformed item is higher than the value of the goods - ownership of a *pro rata* proportion of the new item. The proportion shall be determined by the ratio of the invoice value of the Products subject to Retention of Title compared to the overall value of the new item. If no such retention of title should occur, the Customer shall hereby already transfer his future ownership or - in the ratio as mentioned above - joint ownership of the newly created item to us as security and hold the newly created item in custody for us without charge.

b) Should the Products subject to Retention of Title be joined with other products, we shall acquire joint ownership of the new goods in the ratio of the value of the Products

subject to Retention of Title to the other products at the time of joining. Should the joining of the goods occur in such manner that the Customer's products have to be viewed as the main product, it shall be deemed to be agreed that the Customer assigns a proportionate joint ownership interest to us. The Customer shall hold such joint ownership interest in custody for us.

c) The Customer hereby assigns any receivables arising from the resale of the Products subject to Retention of Title or - in case of joint ownership of the Products subject to Retention of Title *pro rata* as mentioned above - as security to us; we hereby accept such assignment. Should the Customer sell the Products subject to Retention of Title after joining them with other products or together with other products, his assignment of the receivables shall only include the amount of invoice of the Products subject to Retention of Title. The Customer is granted 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 Products subject to Retention of Title if the Customer is in default of the performance of any material obligations, such as payment; in the event of such revocation, we shall be entitled to collect the respective claim ourselves.

5. The Customer shall provide us at all times with any demanded information about the Products subject to Retention of Title or receivables hereunder assigned to us. The pledging or granting of floating mortgages on Products subject to Retention of Title to a third party or any other disposition which jeopardises our ownership interest shall not be permitted until full payment is made. The Customer shall inform any third party about our retention of title and notify us in writing without undue delay of any attachments of or claims to the Products subject to Retention of Title, so as to enable us to enforce our title. The costs of defending against such attachments and claims shall be borne by the Customer if the defence was successful and we have tried to enforce our costs claim unsuccessfully towards the third party.

6. If the realisable value of our secured interest exceeds all of our claims that are to be secured by more than 10%, the Customer shall be entitled to demand a release of the security to such extent.

## 9. Liability and Limitation of Liability

1. Unless otherwise stipulated in these General Terms and Conditions of Sale and Delivery, we shall be liable in the event of breach of contractual and non-contractual obligations in accordance with the statutory provisions.

2. We shall be liable for damages as follows:

a) for damages which have been caused by us intentionally or in a grossly negligent manner;

b) for breach of material contractual obligations in a slightly negligent manner, but only up to the amount of the foreseeable damages which are typical for such contracts;

c) pursuant to the provision of the Product Liability Act and any other mandatory statutory liability;

d) if and to the extent we have assumed a guarantee or made an assurance regarding certain qualities of the product; in this case, however, claims for damages can only be asserted to the extent that the guarantee or assurance shall cover the risk of consequential loss and the loss incurred was actually caused by a circumstance covered by the guarantee or assurance.

3. The limitations of liability resulting from sub-paragraph 9.2 shall also apply to breaches of duty by and/or in favour of persons for whose fault we are responsible in accordance with statutory provisions, i.e. our executive bodies, legal representatives, employees or other authorised agents. They shall apply accordingly to claims for reimbursement of expenses by the Customer. They shall not apply if we have fraudulently concealed a defect.

4. The Customer is obliged to take appropriate measures to avert and limit any damage

## 10. Indemnification

If the Customer sells the delivered products, whether unchanged, transformed or after joining them with other products, he shall indemnify us against any product liability claim of third parties and infringements of property rights if and to the extent the Customer caused the damage himself and/or is directly liable towards such third parties.

## 11. Confidentiality

Trade and business secrets provided by and/or disclosed to the respective other party in the scope of delivery of products, whether orally, in writing or in any other form, as well as any understanding or conclusion obtained thereby (together "**Confidential Information**") shall be treated as confidential and shall not be used for any other purposes. This shall apply regardless of whether such Confidential Information has been identified as "confidential" or "secret" or otherwise as liable to secrecy.

## 12. Assignment

The Customer may assign the rights arising from the parties' contractual relationship to third parties only with our written consent. This shall not affect Sec. 354a HGB (German Commercial Code).

## 13. Miscellaneous

1. If one or several provisions of these Standard Terms and Conditions of Sale and Delivery should be or become invalid or void, in whole or in part, this shall not affect the validity of the remaining provisions. The invalid or void provision shall be replaced, in whole or in part, by such a legally valid provision, which achieves to the extent possible the commercial purpose of the invalid or void provision. The same shall apply in case of a gap or omission.

2. Place of performance and exclusive venue for all disputes arising from contracts concluded with us shall be Rottweil, Germany. We are entitled, however, to take legal action against the Customer before any other court having jurisdiction.

3. The laws of the Federal Republic of Germany shall apply to the parties' legal relationship except for the United Nations Convention on Contracts for the International Sale of Goods (CISG).