

**1 General**

The following Terms and Conditions form the exclusive basis of all our deliveries and supplies. Customers' terms and conditions will not apply, even if we do not contradict them explicitly and carry out the order.

**2 Quotation, Contract Conclusion, Written Form**

All our quotations are without engagement. After receipt of order, the sales contract comes into being by our written order conformation.

All specifications which were made in the course of order processing but before placing the order, especially in terms of performance, consumption or further particular data, are only binding if we confirm them with the order confirmation or in writing at a later date.

**3 Prices**

The prices stated in the order and order confirmation will be applicable, plus VAT. Costs for packaging, transport and transport insurance will be invoiced separately.

In case of an unpredictable increase in material costs, taxes or duties between contract conclusion and delivery, we will be entitled to align our prices accordingly, unless delivery is stipulated within four months after receipt of order. If the customer makes any modifications after contract conclusion, we will be entitled to adapt our prices according to the additional costs incurred.

**4 Dates and Terms**

Lead times and delivery dates stated in our order confirmation will be met to the best of our endeavours; however, they only describe an estimated and not a fixed lead time.

4.1 Lead times do not start before entire clarification of all details. The execution of an order requires a – in each case timely – reaction to all questions, transmission of all necessary or requested drawings, documents or parts to be provided and issuing of all necessary releases and approvals; otherwise, the lead time will be prolonged accordingly.

4.2 The deadline will be considered as met if the consignment was shipped, its readiness for shipment was announced or the consignment was collected within the stipulated lead time or at the agreed delivery date respectively.

4.3 We are obliged to carry out the order if the customer has effected all agreed payments. If payment is effected late, we will be entitled to prolong our lead times accordingly.

4.4 If a deadline cannot be met due to force majeure, mobilization, war, riots, strikes or other unforeseeable obstacles concerning our company, for which we cannot assume any liability and which occurred or became known after contract conclusion, the deadline prolongs accordingly. This also applies to unpredictable occurrences affecting our sub-suppliers' business, for which neither he nor we can assume any liability.

4.5 If a contract penalty is agreed, it is limited to 5% of the total order value.

4.6 If delivery is delayed due to the customer's request or other reasons for which he is liable, we will be entitled to charge him for storage costs, starting one month after information that the goods are ready for shipment. Storage costs will be at least 0.5% of the order value per month or part thereof. They are limited, however, to 5% of the order value, unless higher costs are demonstrably incurred.

**5 Shipment / Transfer of Risk**

Shipment is effected from our works at the customer's risk. Insurance will only be taken out at the customer's request and at his own expense.

**6 Liability for Delay and According to Sections 325, 326 of the German Civil Code (BGB)**

We do not assume any liability for lost profit. Any claims or rights arising from delayed delivery can only be asserted after a delay of more than one month. Compensation is limited to 1% for each completed week of delay and to 10% of the order value in total. If delivery is delayed more than one

month and the customer grants us an adequate time extension under threat of refusal to accept performance, he will be entitled to cancel the contract after expiration of the new deadline. Compensation for non-performance is limited to 10% of the order value.

**7 Copyright**

According to the "Law of copyright and related property rights" (BGBI. [Federal Law Gazette] part I, p. 1273 of 9 September 1965), Vulkan Technic GmbH is originator of all works – development, design, software etc. Therefore, they have the sole right to utilize these works.

**8 Notification of Defects and Warranty**

The warranty period is 12 months; the place of fulfilment is Wiesbaum.

The notification of defect prescribed according to Sections 377, 378, 381, Subsection 2 of the German Commercial Code (HGB) (commercial duty of examination and notice of non-conformity) is to be raised in writing immediately – for evident defects within 10 days after receipt of the goods at the latest – stating the delivery note and invoice number.

8.1 The technical machine availability is 85%, i.e. 85% production availability and 15% machine conversion, maintenance, defects etc.

The technical failure rate is 5%, i.e. 5 out of 100 pieces produced can be NOK due to machine defects.

If different products are produced on the machines, the technical failure rate will be averaged according to the different products.

8.2 In case of a notification of defect in time, we are also entitled to rework or replace the rejected goods as we choose.

A reduction in payment or cancellation of the contract can only be requested if rectification or replacement have failed or were refused.

8.3 We will not assume any liability for impairment of the delivered goods due to wear and tear, damage after transfer of risk or improper use.

8.4 The customer is obliged to grant us the required time and chance to rework or replace the rejected goods.

8.5 Our liability expires if the customer or a third person has reworked or modified our consignment without having our prior approval or if components were used which have not been delivered or approved by us.

8.6 The sale of used machines or items is made to the exclusion of any warranties for defects.

**9 Further Claims**

9.1 A customer's claims on the basis of consequential damage caused by defects, breach of contractual or legal collateral duties, positive breach of contractual duty, fault during contract conclusion or tortious acts are excluded, unless they derive from intent or grossly negligent behaviour on our or our vicarious agent's part.

9.2 For work performance we only have to pay compensation for non-performance according to Section 635 German Civil Code (BGB) for substantial defects which considerably affect the usability. We only have to pay compensation for a loss of profit if the defect was caused by intent or gross negligence or violation of approved engineering rules or consists in the absence of contractually warranted characteristics.

9.3 Inasmuch as claims for fault during contract conclusion as well as positive breach of contractual duty are based on defects as to quality or characteristics of the delivery item, they expire within the same period as warranty rights, otherwise within 3 years.

**10 Terms of Payment**

If contractually stipulated terms of payment are exceeded, we will be entitled, without proof of loss, to claim interest for delay, in the case of bilateral trading transactions interest for maturity, to the amount of 4% above the respective prime lending

rate of the German Central Bank. We reserve the right to provide evidence of further loss or damage. Terms of payment will only be considered as observed if payment is received within the stipulated period of time.

**11 Reservation of Proprietary Rights**

Irrespective of the cause in law, the delivered goods remain our property until all present and future claims resulting from the business relation with the customer – possible refinancing or reverse bill of exchange included – are fully paid. Even if payment by instalments was granted afterwards, the assertion of our proprietary rights is not to be considered as a rescission from our contract, unless this was explicitly declared by us in writing. Apart from our right to claim for our property to be returned, our rights resulting from the sales contract, especially the right to claim for compensation and lost profit, remain with us.

The customer is entitled until revoked to resell the delivered goods within the scope of a proper business. The customer already now assigns us all his claims and ancillary rights resulting from the re-sale, to the value of the conditional goods. The assigned claims serve as a security for all claims according to paragraph 1. For the purpose of payment, the customer is obliged to inform us at our request about the goods' assignment to a third party as well as to let us have all information and documents necessary for the assertion of our rights.

If the goods are processed or manipulated by the customer, the reservation of proprietary rights will also extend to the entire new product. The customer acquires co-ownership to the fraction that corresponds to the ratio of the value of his goods to the value of the goods delivered by the supplier.

We commit to release, at the customer's request, the securities we are entitled to at our discretion on condition that the realizable value of the securities exceeds the claims to be secured by more than 10% and provided that the claims have not yet been settled.

The customer is not entitled to dispose of the conditional goods in a different way than mentioned before. Above all, he is not entitled to pledge or to transfer the goods by way of security. In case of distraint, confiscation or other disposal by third parties, the customer is obliged to refer to Vulkan Technic's proprietary rights. The customer is obliged to inform us immediately about all impairment of the rights to our proprietary goods.

In the event of the customer's behaviour being contrary to contract, especially in the case of a delay in payment for a claim resulting from the business relation, the entire remainder of debt will immediately become due. Under these circumstances we are entitled to demand that the goods be released and to collect them at the customer's premises. In this case, the customer has no right to possession.

**12 Design or Program Modifications**

We reserve proprietary and copyrights for quotations, drawings and other documents; customers are not entitled to make them accessible to any third party without having our express approval. We reserve the right to modify construction or design in the light of new experience or improvements.

**13 Place of Fulfilment, Place of Jurisdiction**

Place of fulfilment for any obligations resulting from this contract – especially in terms of payment of the purchase price – and place of jurisdiction are Wiesbaum. We are entitled, however, to file suit at the customer's place of business.