

# General Sales Conditions Ocono VACUFLEX GmbH

## § 1

### Abstract – Scope of Application

- (1) Our General terms and conditions apply exclusively; we do not accept opposing conditions or those deviating from our General terms and conditions of the Customer unless we have expressly agreed to their application in writing. Our General terms and conditions apply also if we execute the delivery to the Customer without reservations in the knowledge of opposing conditions of the Customer or conditions deviating from our General terms and conditions.
- (2) All agreements made between us and the Customer for the purpose of the execution of this Agreement are documented in writing in this Agreement.
- (3) Our General Sales Conditions only apply for business persons in terms of § 310 (1) BGB (German Civil Code).

## § 2

### Offer – Offer documentation

- (1) If the order is to be qualified as offer according to § 145 BGB (German Civil Code), we may accept it within 2 weeks.
- (2) We reserve ownership and copyrights to illustrations, drawings, calculations and other documents. This also applies for such written documentation which is labelled "confidential". The Customer requires our express written permission prior to their transmission to third parties.

## § 3

### Prices – Terms of payment

- (1) Unless stipulated otherwise in the order confirmation, our prices apply "ex works" excluding packaging; packaging shall be invoiced separately.
- (2) Minimum order value is EUR 500.00 net.
- (3) Statutory value added tax (VAT) is not included in our prices; it is specified in the invoice at its legal amount on the day of invoicing.
- (4) The deduction of a discount is only permissible upon special written agreement.
- (5) Unless stated otherwise in the order confirmation, the purchase price is due and payable net (without deductions) within 30 days from date of invoice. The statutory regulations apply regarding the consequences of default of payment.
- (6) The Customer is only entitled to off-setting if his counter claims were legally determined, are uncontested or accepted by us. He is furthermore entitled to a right of retention in as far as his counter claim is based on the same contractual relationship.

## § 4

### Delivery time

- (1) The commencement of delivery times stipulated by us implies the clarification of all technical issues.
- (2) The compliance with our delivery obligation furthermore implies the on-time and proper fulfilment of the Customer's obligations. The plea of the unfulfilled contract remains reserved.
- (3) If we are unable to meet binding delivery deadlines or delivery dates for reasons for which we are not responsible ("non-availability of the performance" – "Nichtverfügbarkeit der Leistung" according to § 308 no. 8 German Civil Code BGB), we shall inform the customer of this without delay and at the same time inform him of the expected new delivery deadline or delivery date. If the service is also not available within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; we shall immediately reimburse any consideration already paid by the customer. A case of non-availability of the performance in this sense shall be deemed to be in particular the non-timely (self-)delivery by our supplier if we have concluded a congruent hedging transaction, neither we nor our supplier are at fault or we are not obliged to procure in the individual case.
- (4) Partial deliveries are admissible and apply as independent delivery in terms of payment and complaints. We are entitled to excess and under delivery of up to 10% of the ordered quantity, unless unacceptable for the Customer.
- (5) If the Customer is in default of acceptance or if he culpably violates other obligations to participate, we are entitled to demand compensation for incurred damages including any additional expenses. Further claims or rights remain reserved.
- (6) If the above conditions mentioned in paragraph 5 exist, the risk of accidental destruction or accidental deterioration of the merchandise including intent or gross negligence of our representatives or vicari-

are transferred to the Customer at the moment he is in default of acceptance or payment.

- (7) We are liable according to statutory regulations if the underlying purchasing agreement is a fixed-date transaction in terms of § 286 (2) No. 4 BGB (German Civil Code) or of § 376 HGB (German Commercial Code). We are also liable according to statutory regulations if – as a consequence of delay in delivery attributable to us – the Customer is entitled to assert that his interest in the further fulfilment of the Agreement has ceased.
- (8) We are furthermore liable according to the statutory regulations if the default is based on intentional or gross negligent breach of contract attributable to us; we are responsible for the culpability of our vicarious agents. If the default is based on a gross negligent breach of contract attributable to us, our liability for compensation is limited to the foreseeable, typical damage.
- (9) We are also liable according to statutory regulations if the default attributable to us is based on the culpable break of an essential contractual obligation; however, in this case, the liability for compensation is limited to the foreseeable, typical damage.
- (10) For the remainder, in the event of a delay in delivery, we are liable for a flat-rate default compensation of 0.5% of the delivery value for every completed week, however at a maximum of 5% of the delivery value.
- (11) Further statutory claims and rights of the Customer remain reserved.

## § 5

### Force majeure

- (1) In cases of force majeure, the contracting party affected thereby shall be released from the obligation to deliver or accept for the duration and to the extent of the effect. Force majeure is any unforeseen event beyond the control of the respective contracting party which prevents it in whole or in part from fulfilling its obligations, such as, in particular, riots, armed or terrorist conflicts, epidemics or pandemics, fire damage, floods, strikes and legal lockouts as well as operational disruptions or official orders for which it is not responsible.
- (2) The affected Party shall immediately notify the other Party of the occurrence and cessation of the force majeure and shall use its best endeavours to remedy the force majeure and to limit its effects as far as possible.
- (3) In the event of force majeure, the contracting parties shall agree on the further course of action and determine whether, after its cessation, the products not delivered during this period shall be subsequently delivered. Notwithstanding the foregoing, either party shall have the right to cancel the orders affected thereby if the force majeure continues for more than 6 weeks from the agreed delivery date. The right of each contracting party to terminate the contract for good cause in the event of a prolonged force majeure shall remain unaffected.

## § 6

### Transfer of risk

- (1) Unless stipulated otherwise in the order confirmation, the delivery is agreed ex works.
- (2) If the Customer so desires, we shall cover the delivery with transport insurance; the Customer is responsible for any incurred costs.

## § 7

### Liability for defects

- (1) Warranty claims of the Customer imply that he has properly complied with his obligations regarding inspection and requirement to give notice of defects in accordance with § 377 HGB (German Commercial Code).
- (2) If the merchandise exhibits a defect, the Customer is entitled to subsequent fulfilment in form of a remedy or to supply a new defect-free item at his discretion. In the event of a remedy of defect or replacement delivery we are obligated for the costs required for the subsequent fulfilment, particularly transport, shipping, labour and material costs unless they increase because the merchandise was shipped to a location other than that of the place of fulfilment.
- (3) If the subsequent fulfilment fails, the Customer is entitled to withdrawal or reduction at his discretion.
- (4) We are liable according to the statutory regulations if the Customer asserts compensation claims based on intent or gross negligence, voice amount including VAT) to the other processed objects at the

ous agents. If we are not guilty of intentional violation of contract, the liability for compensation is limited to the foreseeable, typical damage.

- (5) We are liable according to the statutory regulations if we have culpably violated an essential contractual obligation; however, also in this case the liability for compensation is limited to the foreseeable, typical damage.  
An essential contractual obligation exists if the violation pertains to an obligation, upon the fulfilment of which the Customer has trusted or was entitled to trust.
- (6) If – due to negligent breach of duty – the Customer is entitled to a claim compensation for the damage instead of performance, our liability is limited to the compensation of the foreseeable, typical damage.
- (7) The liability based on culpable violation of life, body or health remains unaffected; this also applies to the mandatory liability according to the Product Liability Act.
- (8) Unless stated differently above, liability is excluded.
- (9) The statute of limitation for warranty claims is 12 months, calculated from the date of transfer of risk. This does not apply if the merchandise is typically used for a construction and has caused the defect.
- (10) The statute of limitations in case of delivery recourse according to §§ 478, 479 BGB (German Civil Code) remains unaffected; it amounts to five years calculated from the date of delivery of the defect item.

### **§ 8 Joint and several liability**

- (1) Further liability for compensation as provided for in § 7 is excluded without consideration for the legal nature of the asserted claim. This particularly applies for compensation claims based on fault at the formation of an agreement, other breaches of duty or tortious compensation claims for property damages according to § 823 BGB (German Civil Code).
- (2) The limitation according to (1) also applies if the Customer, instead of a claim for compensation of the damage, demands the substitution of useless expenditures instead of performance.
- (3) If our liability for compensation is excluded or limited, this also applies in terms of the personal liability for compensation with respect to our employees, representatives and vicarious agents.

### **§ 9 Security of reservation of title**

- (1) We reserve ownership of the merchandise until the receipt of all payments from the delivery contract. In the event of the Customer's conduct contrary to the agreement, particularly in case of default of payment, we are entitled to retrieve the merchandise. The retrieval of the merchandise by us constitutes a withdrawal from the agreement. Upon retrieval of the merchandise we are entitled to its utilisation; the revenue from the utilisation is off-set against the Customer's obligations less reasonable utilisation expenses.
- (2) The Customer is obligated to treat the merchandise carefully; he is particularly obligated to insure the merchandise against fire, water and theft at his own expense. If maintenance and inspection work has to be carried out, the Customer has to implement those at his expense in due time.
- (3) The Customer is obligated to immediately inform us in writing in the event of levies of execution or other interventions by third parties to enable us to file a petition according to § 771 ZPO (Code of Civil Procedure). If the third party is not able to reimburse us for the judicial and extra-judicial costs of a successful petition according to § 771 ZPO (Code of Civil Procedure), the Customer is liable for the damage we incurred.
- (4) The Customer is entitled to on-sell the merchandise in the course of proper business; however, he now assigns to us all claims in the amount of the invoice (including VAT) which he accrues from his purchasers or third parties based on the on-selling, regardless whether the merchandise was on-sold with or without processing. The Customer is entitled to collect these claims also following the assignation. Our authorisation to collect the claim ourselves remains unaffected. However, we will not collect the claim as long as the Customer complies with his payment obligations from the collected revenue, is not in default of payment and has particularly not applied for the commencement of composition or insolvency procedures or has suspended payment. If this is the case, we can demand that the Customer discloses the assigned claims and their debtors, provides all details necessary for the collection, supplies the respective documentation and informs the debtors (third parties) of the assignation.
- (5) The processing or reconstruction of the merchandise by the Customer is always performed on our behalf. If the merchandise is processed with other objects not belonging to us, we obtain co-ownership in the new object at the ratio of the objective value of the merchandise (in

time of processing. For the remainder, the same conditions apply for the items created by the processing as in case of merchandise delivered under reservation.

- (6) If the merchandise is inseparably amalgamated with other merchandise not belonging to us, we obtain co-ownership in the new object at the ratio of the objective value of the merchandise (invoice amount including VAT) to the other amalgamated objects at the time of amalgamation. If the intermingling occurs in the manner that the object of the Customer is considered the main object, it is agreed that the Customer assigns to us proportional ownership. The Customer preserves the thus created sole ownership or co-ownership for us.
- (7) To secure our claims against the Customer, the Customer assigns to us also such claims, which he accrues based on the intermingling of the merchandise with a property against a third party.
- (8) Upon demand by the Customer we are obligated to release the securities owed to the extent as the realisable value of the securities exceeds the claims of our security by more than 10%; the choice of the securities to be released is at our discretion.

### **§ 10 Place of jurisdiction – place of fulfilment**

- (1) If the Customer is a merchant, our registered business address is the place of jurisdiction; however, we are entitled to also sue the Customer at the court of competent jurisdiction for his residential address.
- (2) The laws of the Federal Republic of Germany apply; the application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.
- (3) Place of fulfilment is our registered office unless otherwise determined in the order confirmation.

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