

General Business Terms of VIAPACK Maschinenbau GmbH

1 General

- 1.1 The following business terms are applicable to deliveries towards entrepreneurs, juristic persons under public law, and legal entities under public law.
- 1.2 Our General Business Terms are exclusively valid. Deviating General Business Terms of the purchaser are not valid.
- 1.3 Our offers are non-binding. Modifications due to technical advancement or requirements of the legislator, as well as changes in form, colour, and/or weight remain reserved in the framework of the reasonable. The documents, drawing, weight and dimension specifications associated with the offer are only approximate, insofar they are not termed binding. All consumption and performance specifications are only approximate statements and are dependent on the goods to be packaged.
- 1.4 We reserve the ownership rights and copyrights for utilization to all our cost estimates, drawings, and other documents without reservation. Such documents may only be made available to third parties after our prior agreement and are to be returned to us immediately upon request.
- 1.5 Correct and timeless self-delivery remains reserved. This is only applicable in the case that the non-delivery is not our fault, especially upon conclusion of a congruent coverage business with our supplier. We will inform the purchaser about the non-availability of the delivery object promptly, and immediately reimburse the corresponding return service to the customer in case of cancellation.
- 1.6 Partial deliveries are admissible, to an extent reasonable for the purchaser.

2 Order confirmation, prices

- 2.1 Exclusive contract basis is the order confirmation or – insofar such confirmation is not given – the offer. The condition described in the order confirmation resp. offer comprehensively and ultimately defines the characteristic of the delivery object. Deviating agreement require our written confirmation.
- 2.2 The prices for machines are ex factory including loading in the factory, excluding packaging, freight, postage, and insurance. The prices are stated as net prices. The VAT is billed at the legally prescribed amount.

3 Payment

- 3.1 Without special agreement the purchase price is to be paid without any deduction as follows:
50 % after receipt of order confirmation
40 % after declaration of readiness for dispatch
10 % 14 days after delivery.
After the commencement of maturity the purchaser comes under delay of payment without further statement of the seller insofar he has not paid yet..
- 3.2 In the case of the existence of faults, the purchaser does not have a right of retention, as long as and insofar this is not in adequate relation to the faults and the presumed costs of the supplementary delivery.
- 3.3 The purchaser is not allowed to enforce claims due to faults if he has not made due payments or the due amount is not in an adequate ratio to the value of the faulty delivery object.
- 3.4 The purchaser may only offset with such demands that are indisputable or legally determined.

4 Delivery period, delay

- 4.1 Delivery terms are binding if we confirm them as such in writing.
- 4.2 The adherence to terms requires the timely receipt of all documents to the supplier by the purchaser, as well as the adherence to the agreed payment conditions and other obligations by the purchaser. If these requirements are not met on time, the terms are adequately extended; this is not applicable if we are responsible for the delay.
- 4.3 A delivery term is adhered to if the readiness for dispatch is declared or the delivery object has left the factory by the time of its expiration.
- 4.4 If the adherence to the terms is subject to Acts of God, for example war, riots, or similar events, like for example strikes, lockout, the terms are adequately extended.
- 4.5 If we come under delay with the delivery, the purchaser may demand compensation for each complete week of the delay of 0.5% each, at the most however 5 % of the purchase price for the part of delivery with which we came under delay, insofar he proves that damage occurred to him here from.
- 4.6 Damage compensation claims of the purchaser due to delays of the delivery as well as damage compensation claims instead of the delivery that go beyond the thresholds stated in 4.5 are excluded in all cases of delayed delivery, also after expiration of a term set for us for delivery. This is not applicable insofar obligatory liability is given in cases of intention, gross negligence, or due to the violation of life, body, or health. The purchaser may only withdraw from the contract within the framework of the legal conditions insofar the delay of delivery is caused by us. A change of the burden of proof to the disadvantage of the purchaser is not associated with the above regulations.
- 4.7 The purchaser is obliged to declare by our request within an adequate term whether he resigns from the contract due to the delay of delivery or demands delivery in all cases.
- 4.8 If the dispatch is delayed by over a month by wish of the customers, or if no exact delivery date was agreed on is delayed by more than a month after declaration of readiness for shipment, the seller may enforce storage fees amounting to 0.5% of the purchase price for every month commenced, at the most however a total of 5 %. The proof of higher or lower storage costs remains with the parties to the contract.

5 Costs for cancellation

- 5.1 If the purchaser withdraws from an issued order inadmissibly, or if the contract is not performed for reasons caused by the purchaser, we may demand 20 % of the purchase price as a damage compensation lump sum apart from the possibility of enforcing a higher actual damage.
- 5.2 The purchaser has the burden of proof that damage did not occur or was significantly lower than the lump sum.

6 Guarantee

- 6.1 The guarantee period is 12 months after delivery for all deliveries, also for spare parts, 12 months after approval for factory, service, and repair services. If an approval is not agreed on or does not take place, the latter due to reasons we did not cause, the guarantee period commences after completion of the factory, service resp. repair service.
- 6.2 Claims for defects are not given only for minor deviations of the agreed conditions and / or only for minor impediment of the usability. Further they are not given if the prescribed service intervals are not adhered to.
- 6.3 We perform guarantee services by improvement or supplementary delivery for faults to the delivery object by our choice at first.
- 6.4 If the supplementary fulfilment fails even after the second try of supplementary fulfilment, the purchaser may demand a reduction or cancellation of the contract by his choice. In case of only a minor contract violation, especially in case of only minor faults, the purchaser has no right of cancellation.
- 6.5 Apparent faults must be declared within a term of two weeks after receipt of the delivery object in writing. Otherwise the enforcement of a guarantee claim is excluded. Timely dispatch is sufficient to maintain the term. The purchaser has the full burden of proof for all requirements for claims, especially for the fault itself, for the time of determination of the fault, and for the timeliness the claim of defect.
- 6.6 If the purchaser chooses to withdraw from the contract due to a legal or material fault after failed supplementary performance, he does not have the right to damage compensation due to the fault.
- 6.7 Statements of conditions and preservability are only then valid as guarantees if they are explicitly termed as such. The same is valid for the takeover of a production risk.

7 Exclusion of guarantees

Statements in catalogues, product descriptions, data sheets, offers, drawing, or other documents concerning dimensions, quantity, colour, replacement, technical data and other characteristics, especially about availabilities etc. describe the conditions and the characteristics of the delivery object, but are not – insofar no explicit deviating agreements exist – guarantees (condition or preservability guarantees) in the sense of § 443, 639 BGB.

8 Limitations of liability

- 8.1 We are liable without limitations for all intentional or grossly negligent violations of obligations as well as in case of the culpable violation of life, body, or health for all damages based on these occurrences, insofar no deviating legal regulations exist.
- 8.2 In case of gross negligence of employees not from management, our liability for material and financial damages is limited to the damages typical and foreseeable for contracts.
- 8.3 In case of slight negligence we are liable for material and financial damages only in case of violation of essential contract obligations. Here our liability is also limited to the damages typical and foreseeable for contracts.
- 8.4 A further liability for damage compensation than as regulated in the above items 2 to 3 is excluded – without consideration of the legal nature of the enforced claim. This is especially applicable for inadmissible actions according to §§ 823, 831 BGB; a possible unlimited liability according to the regulations of the product liability law remains untouched.

9 Software

- 9.1 Insofar software or machine programs are contained in the scope of delivery, the purchaser receives a non-exclusive right to use the delivered software or machine programs including its documentation. It is only allowed for usage for the intended delivery object.
- 9.2 Except for cases of the § 69 e Copyright law, the purchaser is not allowed to change, reverse, replace or extract parts of the software or the machine program. The purchaser may only make a copy of the software or machine program exclusively for reasons of backup. The transfer of the software is done exclusively in machine-readable form (object code).
- 9.3 We give the purchaser the – in case of important reasons revocable – right to transfer the right to usage to third parties. The purchaser may only give the right of usage of the software or the machine program to third parties only together with the device that he acquired from us together with the software or the machine program. In case of a transfer or the right of usage to third parties the purchaser must ensure that the third party is not given any further rights of usage to the software or the machine program than he is entitled to according to this contract, and the third party is assigned at least the obligations from this contract regarding the software. The purchaser may not retain any copies of the software or the machine program. The purchaser is not authorized to grant sublicenses.

10 Statute of limitations

- 10.1 The statute of limitations for claims due to faults of the delivery object is one year as of delivery. This is not applicable in the cases of § 438 I Nr. 1 BGB, 438 I Nr. 2 BGB and § 479 I BGB. The claims stated in the above sentence 2 are subject to a statute of limitations of three years.
- 10.2 The statutes of limitations according to the previous paragraph 1 are applicable – independent of the legal basis of the claim – to all damage compensation claims against the seller that are associated with the fault. Insofar damage compensation claims exist towards the seller that are not associated with a fault, the statute of limitations of par. 1 sentence 1 is applicable for them.
- 10.3 The above statutes of limitations are not applicable in case of intention or if the seller hid the faults, in this case the legal statute of limitations are valid that would be applicable without the existence of maliciousness, or in cases of violation of life, body, health, or freedom according to the product liability law, in case of a grossly negligent violation of obligation, in these cases the legally valid statutes of limitations are applicable.

11 Retention of title

- 11.1 We reserve ownership to the delivery object supplied by us up to full payment of the purchase price.
- 11.2 The purchaser is obliged to handle the goods carefully. Insofar service and inspection work is necessary, the purchaser must conduct these at own costs on a regular basis.
- 11.3 The purchaser is obliged to inform us immediately of an access of third parties to the delivery object as well as possible damages or destruction.
- 11.4 We are authorized to withdraw from the contract in case of behaviour contrary to contract by the purchaser, especially in case of delay of payment, and to demand the return of the delivery object. There is no withdrawal declaration contained in the demand for return, unless this is explicitly stated.
- 11.5 All claims of the purchaser from the resale of the delivery object are assigned to the seller.
- 11.6 If processing is conducted with objects not belonging to us, we acquire co-ownership to the new object at the ratio to the value of the goods delivered by us to the otherwise processed objects.

12 Final clauses

- 12.1 The law of the Federal Republic of Germany is exclusively valid.
- 12.2 Exclusive place of jurisdiction from this contract is our place of business. This is also valid if the purchaser has no general place of jurisdiction in Germany or the place of residence or usual stay is not known at the time of the filing of the claim. We are also authorized to file claim at the location of the purchaser.
- 12.3 The purchaser is responsible for the adherence of possible export requirements, and is to release us from the obligations to that extent.