

## General terms of sale and supply

### 01. General

- 01.1 The following General Terms of Sale and Supply apply to all sales. Terms of Sale and Supply proposed by a purchaser which are at variance with our terms are not binding upon us, even when they are expressly made a condition of the order and even though we do not expressly repudiate them.
- 01.2 This is further deemed to be the case even when the purchaser excludes the efficacy of terms which are at variance with his own in his General Terms of Sale and Supply. Performance by us does not indicate tacit acceptance by us of terms which differ from our own. Instead of itself contradicted General Terms of Sale and Supply apply the legal rules.
- 01.3 Our General Terms of Sale and Supply apply to all subsequent business even if, when the business is entered into, the General Terms are not further expressly referred to.
- 01.4 Secondary agreements, as well as changes and supplements of contract and of the General Terms of Sale and Supply, need to be confirmed in writing.

### 02. Offer, Acceptance

- 02.1 All offers are revocable until their acceptance. We reserve the right to make corrections or changes in the construction or manufacture of our products.
- 02.2 Estimates, invoices and other offer documents remain our property; the copy-right is solely ours and they may not be copied or passed on without our agreement.
- 02.3 If products from a previous series or earlier design are ordered (e.g. from a previous spare parts list) we are not obliged to point out to the purchaser that the goods possibly do not meet the latest general technical standards and regulations.
- 02.4 Orders only count as accepted when they have been confirmed by us in writing.

### **03. Prices**

03.1 Prices quoted in our price lists, quotations, confirmations of orders and invoices are to be understood, unless otherwise agreed in writing, as being exclusive of

VBG GROUP TRUCK EQUIPMENT GmbH

statutory VAT cost of packaging and ex works Krefeld. Packaging is charged at cost and is not returnable.

03.2 In the case of deliveries or part-deliveries which, by agreement, take place later than 4 months from the date of confirmation of order, the sales price at the date of delivery is the price applying.

### **04. Delivery**

04.1 In the case of Act of God, breakdown, shortage of materials or other extraordinary event not within our control which makes delivery impossible or makes it markedly more difficult, we may restrict delivery for the duration of the hindrance, stop delivery, or cancel the contract without incurring liability in damages to the purchaser.

04.2 When our products are produced in series they are subject to statistical quality control. When nothing to the contrary is agreed in writing the testing plan for the "Simple spot-check quality control" (Einfach-Stichprobe-Attributprüfung ASQ) according to guidelines laid down by the Committee for Economic Manufacturing (Ausschuß für wirtschaftliche Fertigung AWF) applies for acceptance and delivery.

04.3 Delivery dates cannot be guaranteed. Claims for damages by purchasers on the grounds of late delivery, even after the elapse of a secondary delivery date set by us, are excluded. This does not apply where we are liable because we have acted wilfully or with gross negligence.

04.4 The delivery of part-orders is permitted. In the case of contracts for continuous delivery, even part-delivery counts as distinct business transaction. Should we be in arrears with the delivery of call-off or part delivery or should performance be impossible the purchaser is entitled, on the basis of general law, to withdraw from the whole contract. Claims for damages for non-performance of the whole contract are excluded.

## **05. Dispatch**

- 05.1 Dispatch takes place at purchaser's own risk. With all deliveries the risk is transferred to the purchaser at the time of the delivery of the goods to the forwarding agent, carrier of whosoever has been designated to carry out the transportation.
- 05.2 Packaging and mode of transport as well as dispatch route are at our discretion and all liability is excluded if the purchaser has not made a specific stipulation in good time before the expiry of the delivery period.

## **06. Payment**

- 06.1 All invoices are to be paid in full without deduction within 30 days and are due after expiration of 30 days even without reminder. Payment may only be made in the currency agreed. Bills of exchange and cheques will only be accepted as means of payment and count as payment only when they have been cleared.
- 06.2 Setting off against a counter claim of any kind is excluded unless the counter claim is not undisputed or legally determined.
- 06.3 In deviation from §§ 366, 367 of the German Civil Code BGB and such other stipulations of the purchaser we are entitled to determine which claims are met by the payments made by the purchaser.
- 06.4 After the due date for payment we are entitled to charge the purchaser with interest for late payment in the amount of 5% above the base rate of interest and, as far as the purchaser is not considered to be an endconsumer, in the amount of 8% above the base rate of interest in each case plus the applicable VAT occurring. Payment of interest is due immediately.

## **07. Arrears**

- 07.1 If the purchaser does not adhere to the agreed terms of payment, in particular, if he becomes partly or completely in arrears with a payment, all existing payment obligations to us, also those from other contracts, become immediately due for payment without regard to the terms of any bill of exchange. The same applies if the purchaser stops payment, if the purchaser goes into receivership or applies to the court to be wound up or goes into liquidation, as well as where any facts become known which lessen his creditworthiness.
- 07.2 When the purchaser is in arrears, we can without prejudice to our other legal rights, refuse further deliveries arising from this or other contracts or make them dependent upon advance payment or upon the granting of security.

## **08. Reservation of rights of ownership**

- 08.1 Our products are delivered subject to the reservation of our rights of ownership and remain our property until full settlement of all claims arising out of the business relationship.

08.2 The purchaser may process the goods within the context of the normal running of his business and/or sell them. He is nevertheless not entitled to mortgage the goods or to assign them as security. Distraint or seizure or claims by third parties

VBG GROUP TRUCK EQUIPMENT GmbH

are to be notified to us by the purchaser immediately. He must at once take all such steps as may be necessary to counteract such seizure or in defence against such claims. Moreover, he must support us in every way in the upholding of our legal rights. In the case of selling-on the purchaser is bound to make clear our reservation of proprietary rights in the goods. He, therefore, surrenders in advance all rights whatsoever under any selling-on agreement in our favour until settlement of all our outstanding claims against him. The purchaser must inform the transferee that the purchaser has surrendered his rights in our favour.

08.3 Should the purchaser fail to fulfil his payment obligations or should he fail to fulfil correctly other obligations arising out of the retention of title, his right of possession to the products ceases and we are entitled after setting of a reasonable term to withdraw from the contract and notwithstanding all protests and objections to the contrary to demand the immediate return of the products. The purchaser bears the costs of returning the goods whenever goods have to be recovered.

08.4 The reservation of our property rights does not lapse simply because our claims are absorbed in a current account and the balance is accepted.

08.5 We are obliged at the request of the purchaser to relinquish our reservation of rights of ownership to the same extent that the invoice value of the goods delivered by us and stored by the purchaser exceeds the value of our claims by more than 25 %.

## **09. Guarantee**

09.1 Should one of our products have a fault which is our responsibility or be defective or unusable as a consequence of a materials, finishing or construction fault, then we will, at our discretion, deliver a replacement free of charge or will repair the fault. Should the replacement or the repair also be defective the purchaser may at his discretion request an appropriate reduction in the price or the cancellation of the contract. Continuing claims by the purchaser against us and our associates are excluded. This does not apply where we are liable because we have acted

wilfully or with gross negligence or because the product lacks specific qualities which were offered.

- 09.2 Claims under the guarantee as at para 9.1 are statute-barred in relation to the endconsumer after the expiry of two (2) years from the date of delivery in the case of new articles/products, and after the expiry of one (1) year in the case of used articles/products. In relation to business enterprises we guarantee the faultlessness of new articles/products for a period of one (1) year from the date of delivery. We are not liable for any defects of quality in case of used articles/products.

VBG GROUP TRUCK EQUIPMENT GmbH

- 09.3 Faults in our products must be immediately notified to us in writing and where the defects are obvious within one week of the arrival of the consignment at the latest, in the case of latent defects at the latest within one week of their discovery. If this is not done all claims under the guarantee of whatever kind are excluded. With regard to the burden of proof the statutory regulations will apply. Rejection of part consignments does not give the purchaser the right to refuse performance of the rest of the contract.
- 09.4 We are not liable for claims by third parties for infringement of patent, registered design or of trade mark arising through the delivery of our goods.

## **10. Data processing**

- 10.1 Customer data are registered centrally in our organisation and used as far as necessary for correct order-handling.

## **11. Invalidity**

- 11.1 Should one or several of the General Terms of Sale and Supply be invalid or become invalid, the validity of the remaining Terms of Sale and Supply is not thereby affected.

## **12. Place of performance, competent court, law applicable**

- 12.1 The place of performance for the responsibilities of both parties is Krefeld. In case of disputes, even in so far as such a dispute concerns these General Terms of Sale and Supply or the contract, the competent court is Krefeld.

We are also entitled to bring an action against the purchaser in his court of general competence.

- 12.2 The legal relationship between ourselves and the purchaser is subject only to the Federal Republic of Germany to the exclusion of all other national laws. The validity of CISG are excluded.