

VEM General Terms and Conditions of Purchase

1. Scope / Conclusion of Contract / General

- 1.1 These VEM terms and conditions of purchase apply exclusively. In case the contractor's terms and conditions are adverse or deviate from the VEM conditions of purchase, the customer shall only accept those, if he accepts its validity expressly and in writing. These conditions of purchase also apply if the customer accepts or pays the delivery without any reservation although he knows that the contractor's terms and conditions are adverse or deviate from these conditions of purchase.
- 1.2 These conditions of purchase shall also apply for all future businesses with the contractor, provided it concerns a similar kind of business.
- 1.3. All data, documents and details, regardless of which kind, related to this business process or the business relation respectively, shall be checked for completeness and accuracy and shall be handled and stored with special diligence by the contractor.
- 1.4 Offers made by the contractor shall be submitted at no charge. The issue of a cost estimate shall be at no charge as well. Unless agreed separately in particular cases, the customer shall bear no expenses and shall pay no commission for visits, planning and further advances, which the contractor renders in conjunction with biddings. Cost estimates are binding.
- 1.5 A contract is concluded if the customer places an order in response to the contractor's offer, which shall be submitted to the customer in writing or otherwise. Orders shall be made in writing including two different signatures. The customer's signature policy shall apply. Orders, alterations or additions of orders made orally are only binding, if they are confirmed by the customer in writing.
- 1.6 The contractor is obliged to accept the customer's order within two weeks from purchase order date.
- 1.7 The contractor is obliged to compare the drawing index stated on the order with the one on the present drawings. If any deviations occur, the contractor shall be obliged to advise the customer of it discretely.
- 1.8 If the delivery or single delivery parts are subject to state import- or export regulations, the required licences shall be obtained by the contractor at his expense in due time.
- 1.9 Basically, drawings, measures, tolerances, standards, qualities etc., determined by the customer apply. Documents and specifications, like figures, drawings, indications of weight and measurements, submitted by the supplier deviating from that, are subject to permission by the customer.
- 1.10 Property- and usage rights regarding samples, cost estimates, drawings, documentations and similar information of material and immaterial kind, which arise from the contractor at the instigation of the customer, pass to the customer.

2. Prices and Payment

- 2.1 The price declared in the order shall be binding.
- 2.2 Unless declared otherwise in the order, the prices including packing, loading and transport to the place of fulfilment plus sales tax shall apply in the respective legal amount.
- 2.3 Unless agreed otherwise in writing, the customer shall pay the purchase price within 15 days upon receipt of the invoice with 3 % discount or within 30 days upon receipt of the invoice with 2 % discount or within 60 days upon receipt of the invoice net.
- 2.4 The term of payment shall start upon receipt of the contractor's invoice according to section 2.4, provided it complies with the requirements subject to section 3, but not until the contractor has delivered the owing goods completely. Part payment or invoicing of rendered partial performance are subject to written agreement by the customer.
- 2.5 The term of payment shall start - in case an acceptance needs to be carried out, notwithstanding section 2.4 - only after successful acceptance, on presentation of the acceptance protocol signed by both contracting parties and postal receipt of the invoice; however not before the appointed delivery date.
- 2.6 Payments do not imply acceptance of the delivery or the performance as contracted.
- 2.7 Advance payment is only made on presentation of a security according to the customer's sample. The sample is sent on request or can be obtained on www.vem-group.com/index.php?id=522&lkz=1.

3. Invoices

- 3.1 Invoices shall be sent to the customer's address in duplicate for every order and delivery separately stating the order number and further purchase order indicators, unless another invoice address has been specified in the order.
- 3.2 Copies of the invoice shall be marked as such. The sales tax shall be shown separately on the invoice and the tax number shall be stated. Invoices made out improperly are returned to the issuer, the terms of payment shall then begin upon receipt of the correct invoice.

4. Delivery Dates

- 4.1 The dates or terms stated in the order are binding. Timeliness of deliveries without assembly or mounting depends on receipt in the receiving centre specified by the customer.
- 4.2 In case of delay in delivery, the customer shall be entitled to demand a liquidated damage caused by delay in the amount of 0.5 % of the value of goods delivered per started week, but not more than 10 % of the value of goods ordered. Further legal claims are reserved. The contractor has the right to prove to the customer that no or no considerably minor damages were caused due to the delay.

- 4.3 The contractor is obliged to inform us without delay and in writing if circumstances occur or get obvious, which may result in the fact that agreed dates cannot be kept. The contractor needs to specify the cause and the probable duration of the delay in delivery.
- 4.4 Unreserved acceptance of the delayed delivery or performance does not include any waiving of claims for compensation, which the customer is entitled to due to the delayed delivery or performance. This applies until complete payment of the money, which the customer owes for the respective performance.
- 4.5 The contractor can only appeal to absence of necessary documents the customer needs to submit, if he reminds him in writing and if he has not received the documents within the adequate period.

5. Delivery, Passing of risk, Acceptance

- 5.1 Unless agreed otherwise, part deliveries and partial performances are excluded.
- 5.2 Incoterms 2002 apply. Unless agreed otherwise, deliveries are sent according to the Incoterm-clause DDP (delivered duty paid). For the case that a pricing term has been arranged according to Incoterm EXW (ex works), the customer may give the contractor instructions regarding mode of transport, transport company and forwarder after conclusion of contract. If these specifications are not adhered to, the contractor shall bear the accrued extra expenses.
- 5.3 Place of fulfilment is the customer's registered office or the registered office stated in the order by the customer.
- 5.4 Every delivery shall contain the packing slip or delivery receipts stating the content, the order number or further purchase order indicators. If shipping documents are not attached to a delivery, the delivered goods shall be stored at the customer's at the contractor's expense and risk until receipt of the shipping documents. The customer shall be entitled to claim a flat-rate penalty in the amount of 250 Euro from the contractor for missing certificates, factory certificates or similar as contracted.
- 5.5 For deliveries without assembly or mounting, the risk passes upon receipt at the address for shipment stated by the customer. If an acceptance needs to be carried out, it is decisive for the passing of risk.
- 5.6 The contractor shall bear the costs for disposal of packing materials. Any costs for the return transport of packaging shall also be borne by the contractor.
- 5.7 The cost of insurance for the delivered goods, especially the forwarding insurance, shall not be borne by the customer.
- 5.8 The contractor shall be informed that the customer is a customer exempted from forwarding insurance.

6. Defect inspection and Guarantee

- 6.1. The general quality guidelines of the VEM-group apply and can be viewed under [www.....](#)
- 6.2. The contractor guarantees that the deliveries or performances comply with the agreed specifications and that they possess the warranted characteristics and are not afflicted with any faults, which annul or reduce their value or their suitability for their usual consumption or as stated according to the contract.
- 6.3. The contractor shall inform the consumer of any modifications in writing regarding the composition of the processed material or the constructive design compared to prior similar deliveries and performances adduced for the customer before production begin or before provision of performances. Modifications need to be confirmed in writing by the purchaser. Shifting of the production of parts, which the customer obtains from the contractor, to other sites at home and abroad, which are not known to the customer, must be notified to the customer.
- 6.4. Incoming goods control only takes place at the customer's with respect to apparent defects, transport damages, completeness and identity of the goods. Such defects shall be criticised by the customer within a reasonable time. The customer reserves the right to carry out an advanced incoming goods control. The customer shall also give notice as soon as defects are noticed according to the proper course of business. The contractor waives the objection of the delayed notice of defects.
- 6.5. The legal claim for defects is due to the customer in full. The customer is entitled to demand removal of defects or delivery of new goods by the contractor at his own option in any case. The right for damages, in particular for damages instead of performance, is expressly reserved.
- 6.6. Claims for defects – regardless on which legal ground – prescribe 36 months after happened delivery. Longer contractual or legal limitation periods shall remain unaffected hereof. The limitation period begins with passing of risk (delivery for purchase contract; acceptance for work performances).
- 6.7. If the contractor fulfils his obligation regarding supplementary performance by replacement, the limitation period for the delivered goods intended as replacement shall start new after its delivery, unless the contractor reserved the right for supplementary performance expressly and applicably to carry out replacements only as a gesture of goodwill.
- 6.8. The contractor shall bear the costs and risk of the return of faulty delivery items.

7. Product Liability

- 7.1. If the contractor is responsible for a product defect, he shall be obliged to indemnify the customer from claims for damages of third parties on first demand, if the cause is in his domain and organization area and if he is personally liable in relation to third parties.

- 7.2 In this context, the contractor is also obliged to recompense any expenses, which accrue in association with callbacks carried out by the customer. The customer shall inform the contractor of content and extent of the product recalls, which need to be carried out – if possible and reasonable – and shall give him an opportunity for a statement. Further legal claims shall not be affected.
- 7.3 The contractor is obliged to effect a sufficient product liability insurance and to maintain it during the contract period including limitation periods. If the customer has further entitlements to damages, these shall remain unaffected. The contractor is required to submit a copy of the valid insurance contract to the customer on demand.

8. Trademark Rights of Third Parties

- 8.1 No trademark rights of third parties within the Federal Republic of Germany shall be infringed by delivery and utilisation by the customer. The customer shall inform the supplier of third-party claims. The customer shall not allow any claims of his own accord. The customer authorises the contractor to assume conflicts with third parties legally and out of court.
- 8.2 In the event of a culpable infringement upon rights of third parties, the contractor shall ward off claims of third parties at his expense, which third parties claim due to infringement of trademark rights on grounds of deliveries and performances by the supplier. The contractor shall indemnify the customer from all claims regarding the usage of such trademark rights, if he is to represent it.
- 8.3 If the usage of the delivery by the customer is affected by trademark rights of third parties, the contractor shall obtain a permission at his expense or shall alter or replace the respective parts of the delivery, so that the usage of the delivery shall not be affected by trademark rights of third parties and he shall make sure that these comply with the contractual provisions at the same time.

9. Provision

- 9.1 The customer reserves all property- and copy rights on figures, drawings, calculations, works standard sheet, manuscripts and further documents made available by the customer. They must not be made available to third parties without explicit consent in writing by the customer and shall exclusively be used for the production of goods and provision of services. The customer is entitled to demand their delivery at any time. They shall be kept secret to third parties.
- 9.2 Materials, regardless of which kind, supplied by the customer, shall stay the customer's property. They may only be used in compliance with the law. The customer shall get common ownership in the new good in the event of processing or mixture proportional to the value of the customer's good and to the other processed objects at the time of the processing and for the storage period of the object at the contractor's.

- 9.3 The contractor is obliged to check and to store the supplied materials carefully. Variations (e.g. amount, quality etc.) shall be notified to the customer. The contractor shall be liable for loss or damages due to negligence or intent.
- 9.4 The customer reserves the right on tools; the contractor is obliged to utilise the tools exclusively for the production of the goods ordered by the customer. The contractor is obliged to insurance the tools belonging to the customer against fire loss, water damage and theft for the replacement value at his expense. The contractor is obliged to carry out necessary maintenance and inspection works on these tools, as well as all repair and service works at his expense in good time. He shall immediately notify the customer of any faults; should he fail to do so culpably, the claims for damages shall remain unaffected.
- 9.5 The working materials described in section 9.2 and 9.4 shall only be made available for third parties after the customer's prior consent in writing. Products, which are produced according to documents like drawings, models and such designed by the customer, according to confidential details or with tools or recreated tools provided by the customer, may neither be used by the contractor himself nor be offered or delivered to third parties.

10. Secrecy

The contracting parties oblige themselves mutually to keep all information secret obtained by the other party orally or in writing in association with the cooperation and this contract and not to reveal them to third parties. The secrecy shall also stay effective after termination of the business relation for the duration of five (5) years.

11. Transfer and Pledge

Assignment or pledge of contractual claims shall only be effective after the customer's prior consent in writing. The customer shall not deny this consent without cause.

12. Spare Parts

The contractor is obliged to supply spare parts for the time period of the presumable technical usage, however at least 10 years after delivery under appropriate conditions. If the supplier stops the production of spare parts, he shall be obliged to notify the customer of this and to give him the opportunity for a last order.

13. References and Publications

The contractor is only allowed to state the customer's company or the brand label when giving references or for publications, if he has given consent in writing.

14. Scrap-clause – Gießerei Keulahütte GmbH Krauschwitz

The contractor ensures that the scrap, which is to be delivered, complies to the agreed analyses and regulations, free from explosive bodies, objects which pose a threat of explosion, hollow bodies and radioactive substances.

15. Final Provisions

- 15.1 All taxes, fees and duties in reference to performance outside of the Federal Republic of Germany shall be borne by the contractor unless agreed otherwise.
- 15.2 If single provisions of these terms and conditions or of this contract shall be or become ineffective partly, the other provisions shall remain unaffected.
- 15.3 Exclusive venue for all disputes arising from this contract shall be the responsible court for our business location. We are also entitled to sue the supplier at the venue of his business location.
- 15.4 The law of the Federal Republic of Germany applies to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).