

# General terms and conditions of sale, delivery, and installation of Volkmann & Rossbach GmbH & Co. KG

## 1. General

(1) Contracts shall be entered into under the exclusive applicability of our General terms and conditions of sale, delivery, and installation ("GTC"); we do not acknowledge any terms and conditions of the buyer (i) standing in opposition to our GTC or (ii) deviating therefrom unless we have expressly consented in writing to their applicability. Our GTC shall also apply even if we fulfill our contractual obligation without reservation, cognizant of any terms and conditions of the buyer that oppose or deviate from our own GTC.

(2) Our GTC shall apply only vis-à-vis (i) an entrepreneur (§§ 310 I, 14 of the *Bürgerliches Gesetzbuch* (the Civil Code, the "*BGB*")), (ii) a legal person under public law, or (iii) an investment fund under public law. The GTC shall also not be inapplicable in these cases insofar as our offer is made within the scope of a tender under the *Vergabe- und Vertragsordnung für Bauleistungen Teil A* (the Construction Contracts Procedures, Part A (the "*VOB/A*")) or any other public awarding proceedings.

(3) All covenants which are made between the buyer and us to amend the contract or for the purpose of executing this contract are to be memorialized in writing. Such shall also apply to any restatements. The understanding that the written-form is to be used can only be repealed in the individual case only in writing.

(4) Our GTC shall also apply to all future supply transactions with the buyer.

(5) Insofar as the buyer is (i) a merchant, (ii) a legal person under public law, or (iii) an investment fund under public law, venue shall be at our business seat; however, we shall also have the right to bring suit against the buyer before the court at its seat as well.

(6) If no other agreement has been made, then the place of performance shall be our business seat.

(7) The contract shall be subject to German law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods. The contractual language shall be German.

## 2. Offer and contract formation

(1) Our offers shall be subject to confirmation and non-binding, unless we have expressly designated them as binding. The written order confirmation shall be dispositive for the scope of our delivery duty. Only with dispatch of the order confirmation or upon dispatch of the goods shall the order be deemed as accepted. Details specified in the order confirmation shall take precedence over the subsequent provisions. Any restatements, amendments, or side agreements prior to or during the order shall be effective only if they have been confirmed by us.

(2) A buyer order which is to be characterized as an offer to enter into a sale and purchase agreement can be accepted by us within two (2) weeks by sending an order confirmation or by shipping the products ordered within the same period, unless a shorter or longer binding period has been stipulated.

(3) We shall reserve ownership and copyrights and other intellectual property rights to estimates, drawings, and other documents. These may be shared with third parties only without our written consent, independently of whether we have identified them as confidential. We undertake to make accessible to third parties any plans designated as confidential by the person or party placing the order only with said party's consent.

(4) Descriptions of services, and prospectuses, samples, specimen, or the like based upon the contract, as well as stipulated weights and dimensions shall not be – in the absence of a separate written agreement – guarantees of material consistency or durability, but mere product descriptions. If any guarantees of material consistency or durability are assumed, then we shall issue our own certificates pertaining to such. Any public statements, promotions, or advertising by the supplier shall not constitute any contractual statement as to material consistency of the delivery.

## 3. Prices – terms and conditions of payment – price adjustment

(1) Unless otherwise stipulated, the prices to be invoiced shall be those which are valid as of the date of the delivery, plus the value-added tax applicable on the day of invoicing.

(2) Insofar as nothing else follows from the order confirmation, the applicable prices shall be ex works, exclusive of packaging, freight, postage, and insurance.

(3) Any discount for early payment shall require special written agreement.

(4) Insofar as nothing to the contrary follows from the order confirmation, the purchase price shall be due and payable net (without deduction) within fourteen (14) days of the invoice date. In the event of payment default, we shall have the right to bill default interest in the amount of 9% above the base interest rate of the European Central Bank. The right to assert damages extending beyond such shall remain reserved. The person or party placing the order shall have the right to substantiate to us that no damages or lesser damages have arisen from the default.

(5) Any setoff or any exercise of a retention right vis-à-vis our receivables and claims shall be possible only in the event of counter-demands or counterclaims which are undisputed or judicially determined.

Moreover, the person or party placing the order shall be authorized to exercise a retention right under the aforementioned terms and conditions insofar as its counterclaim rests upon the same contractual relationship.

(6) In the event of an increase in our prices, in the market prices, in the prices of the materials required by us, or in our other cost prices, we shall have the right to reasonably increase our offer price, insofar as more than six (6) weeks lie between contract formation and our delivery. In the event of an increase which considerably (more than 10%) exceeds the general cost-of-living expenses under the index of a

four-person household, the person or party placing the order shall have the right to withdraw from the contract if we do not wish to perform on the contract under the former terms and conditions. In this event, any compensatory damages claims shall be precluded unless the increase (i) would have already been foreseeable for us upon entering into the contract and (ii) would not be taken into consideration due to gross fault. The withdrawal right shall not exist in the event of price increases based upon an increase in freight rates or in the event of any increases in value-added tax.

(7) If terms and conditions of payment are not complied with or if circumstances become known, which, in the exercise of our reasonable commercial discretion, permit justified doubts to arise as to the creditworthiness of the person or party placing the order, then we shall have the right, notwithstanding any further-reaching rights under law in these cases, (i) to demand pre-payment or the placement of security acceptable to us for any deliveries still outstanding and (ii) to withdraw from the contract and to demand compensatory damages after the fruitless elapsing of a reasonable grace period for the performance of such security. We shall reserve the right to use any payments for settlement of the oldest posted invoices plus any default interest and expenses accrued thereon in this order: expenses, interest, main receivable.

## 4. Compensation for unjustified non-acceptance

(1) If the person or party placing the order (i) unjustifiably withdraws from the contract or (ii) does not accept the goods within the stipulated period or a reasonable notice period established in the notice for the readiness to ship, then for our part we shall be able to withdraw from the contract and demand compensatory damages. In this event, the risk of any accidental destruction or of an accidental deterioration of the goods shall pass to the person or party placing the order, on the date on which this person or party enters into acceptance default.

(2) The party or person placing the order shall owe 20% of the net invoice amount as compensatory damages; if we can substantiate the occurrence of greater damage, then compensation for this damage shall be owed. The party or person placing the order shall be permitted to substantiate that no damage or only slight damage has arisen to us.

## 5. Delivery and performance time

(1) Delivery dates or deadlines that have not been expressly stipulated as binding shall be solely non-binding details. The delivery time specified by us shall commence only when the technical questions have been clarified. Similarly, the party or person placing the order shall have to fulfill all incumbent obligations in a proper and timely manner.

(2) Delivery dates stipulated shall refer to the goods' shipping or collection date, unless otherwise stipulated. If we enter into default and the party or person placing the order suffers damage as a result thereof, then such damages shall be limited to 0.5% per commenced delivery, but as a whole at most to 5% of the value of that respective part of the total delivery which, as a result of the delay for which we are responsible, cannot be used in a timely or contractually contemplated manner. This limitation of liability shall also apply to any compensatory damages claims being asserted under provisions of law in lieu of performance and/or claims for compensation for fruitless expenditures. Said limitation however shall not apply to damages based upon a grossly negligent or malicious breach of duty or for damages arising from culpable injury to life, limb, or health.

(3) The party or person placing the order shall be able to withdraw from the contract within the framework of provisions of law, insofar as we are responsible for the delay in performance.

(4) Our delivery duty shall be suspended as long as the party or person placing the order is in default with a mature payment. Unforeseeable operational disruptions, failures to meet delivery deadlines or delivery stoppages by our suppliers, deficiencies in manpower, energy, or raw materials, strikes, lockouts, difficulties in procuring transportation, disruptions in transportation, orders from official authorities, and incidences of *force majeure* shall release the party affected thereby for the duration of the disruption and in the scope of their effect from the delivery or acceptance obligation. If as a result thereof the delivery or acceptance is delayed by more than eight (8) weeks, then each party shall have the right, under preclusion of all further claims, to withdraw from the contract with respect to the quantity affected by the disruption in delivery or acceptance.

(5) We shall have the right to effect partial deliveries and partial performances at any time, insofar as such is reasonable for the customer.

(6) Any further liability for any delivery default for which we are responsible shall be precluded. Such shall be without prejudice to any additional legal claims and rights of the party or person placing the order, to which said party or person is entitled to in addition to the claim for compensatory damages due to a delivery default for which we are responsible.

(7) If the party or person placing the order enters into default, then we shall have the right to demand compensation for the damage arising therefrom and for any additional expense. The same shall apply if the party or person placing the order culpably breaches assistive duties. Upon the occurrence of acceptance or debt default, the risk of accidental deterioration and destruction shall pass to the party or person placing the order.

## 6. Changes in design

Any changes to the design or in the form of the goods, based upon a technical improvement which has become known after the contract is entered into, or upon a legal enactment or DIN/EN norm coming into force after the contract is entered into, shall continue to be permissible even after the contract is entered into, insofar as (i) the item delivered is not thereby changed materially and (ii) the change is reasonable for the party or person placing the order. Otherwise, both parties shall be able to withdraw from the contract without rendering compensatory damages.

### 7. Passage of risk

(1) We reserve the right to select the shipping route and shipping mode. Any additional expenses caused by special shipping requests of the buyer shall be borne by the buyer. Such shall also apply to any increased freight rates incurred, any additional expense for detours, warehousing expenses, etc., insofar as freight-paid delivery has not been stipulated. The risk for destruction, loss, or damage to the goods shall pass with their dispatch, or, in the event of collection by the buyer, with their provision to the buyer.

(2) To the extent that the party or person placing the order so desires, we shall take out transportation insurance for the delivery; any expenses incurred in this regard shall be borne by the party or person placing the order.

### 8. Ownership proviso

(1) Until the satisfaction of all receivables, including all balance receivables from current account, to which we are entitled against the buyer now or in the future, the delivered goods (proviso goods) shall remain our property. In the event of any conduct by the Buyer in breach of the contract, e.g., payment default, we shall have the right, after setting a reasonable notice period, to take back the proviso goods. If we take the proviso goods back, this action shall constitute a withdrawal from the contract. If we pledge the proviso goods, then this action shall constitute a withdrawal from the contract. We shall have the right to make use of the proviso goods after having taken them back. After deduction of an appropriate amount for the expenses involved in making use thereof, the proceeds from making use thereof are to be offset with the amounts owed to us by the buyer.

(2) The buyer shall treat the proviso goods with due care and shall adequately insure them at its own expense and at replacement value against damages from fire, water, and theft. Any servicing and inspection work which becomes necessary is to be performed by the buyer in a timely manner and at its own expense.

(3) The buyer shall have the right to sell and/or to use the proviso goods in the ordinary course of business, as long as the buyer is not in payment default. No pledging or chattel mortgage/assignment as security shall be permissible. With respect to the proviso goods, the buyer already now hereby assigns to us in full any receivables relating to the proviso goods (including all balance receivables from current account) arising from resale or based upon any other legal grounds (insurance, unlawful act) as a security; we hereby accept the assignment. We revocably authorize the buyer to collect for its own account in its own name on the receivables assigned to us. The collection authorization shall be revocable at any time, should the buyer fail to duly comply with its payment obligations. Nor shall the buyer be authorized to assign this receivable for the purpose of collecting receivables in the way of factoring, unless at the same time the factor's obligation is established to effect consideration to us directly in the amount of the receivables, as long as there are any receivables from us against the buyer.

(4) In each case, the buyer shall process or reorganize the proviso goods for us. Insofar as the proviso goods are processed with other items not belonging to us, we shall acquire joint title in the new item proportionally to the value of the proviso goods (final invoice amount inclusive of value-added tax) in relation to the other processed items at the date of the processing. The same rule shall apply to the new item coming into existence via processing as to the proviso goods. In the event of the inseparable commingling of the proviso goods with other items not belonging to us, we shall acquire joint title in the new item proportionally to the value of the proviso goods (final invoiced amount inclusive of value-added tax) in relation to the other processed items at the date of the process. If the buyer's item is, as a result of the commingling, to be regarded as the primary item, then we and the buyer are in agreement that the buyer shall transfer to us pro rata joint ownership in this item; we hereby accept the transfer. The buyer shall safeguard for us our sole or joint title in an item arising in this manner.

(5) In the event that any third party gains access to the proviso goods, including, but not limited to, pledges, the buyer shall provide notice of our title and inform us without undue delay, so that we can enforce our property rights. Insofar as the third party is not in the position to reimburse us for any in-court or out-of-court expenses arising in connection therewith, the buyer shall be liable therefor.

(6) We shall be obligated to release any security to which we are entitled insofar as the realizable value of our security exceeds the receivables to be secured by more than 10%; in so doing, it shall be incumbent upon us to select the security to be released.

### 9. Warranty

(1) Any claims of the buyer for defects shall exist only if the buyer has duly complied with its inspection and complaint duties under § 377 of the *Handelsgesetzbuch* (the Commercial Code).

(2) Insofar as a defect in the goods is present for which we are responsible, we shall be obligated to subsequent performance, under exclusion of the rights of the buyer to withdraw from the contract or to reduce the purchase price (reduction), unless we have the right to refuse subsequent performance due to provisions of law. The buyer shall have to grant us a reasonable time period for subsequent performance. The subsequent performance may at the buyer's discretion be effected through (i) elimination of the defect (subsequent improvement) or (ii) delivery of new goods. In the event that defects are eliminated, we shall bear the requisite expenses, insofar as these are not increased due to the contractual item being located at a place other than the place of performance.

If the subsequent improvement has failed, then the buyer shall be able, at its discretion, to demand a reduction of the purchase price (reduction) or to declare withdrawal from the contract. The subsequent improvement shall be deemed as failed upon the second fruitless attempt, unless further improvement attempts are appropriate and reasonable to the buyer based upon the purpose of the contract.

The buyer shall be able to assert claims for compensatory damages for the defect only under the following terms and conditions, if the subsequent performance has failed. This shall be without prejudice to the buyer's right to assert further claims for compensatory damages under the following terms and conditions.

(3) Any warranty claims of the buyer shall lapse one (1) year after the delivery of the goods at the seller's, unless we have concealed the defect in bad faith; in this case, the provisions of law shall apply.

(4) We shall have unlimited liability under provisions of law for (i) injuries or damage to life, limb, and health that are based on any negligent or malicious breach of duty by us, by our legal representatives, or by our vicarious agents, as well as for (ii) damages contemplated by the liability under the *Produkthaftungsgesetz* (the Product Liability Act). With respect to damages which are not encompassed by sent. 1 and which are based upon malicious or grossly negligent breaches of contract and bad faith by us or by our legal representatives, or by our vicarious agents, we shall be liable as contemplated by provisions of law.

In this event, however, liability for compensatory damages shall be limited to the foreseeable typically arising damage, insofar as we, our legal representatives, or our vicarious agents have not acted maliciously. To the extent in which we have given a guarantee as to material consistency and/or durability with respect to the goods or parts thereof, we shall also be liable within the scope of this guarantee. However, for damages based upon the lack of the guaranteed material consistency or durability, but which have not directly affected the goods, we shall be liable only if the risk of such damage is evidently encompassed by the guarantee as to quality or durability.

(5) We shall also be liable for any damages which have been caused by simple negligence, insofar as the negligence concerns the breach of such contractual duties the compliance with which is of special significance for achieving the contractual purpose (cardinal duties). We shall, however, be liable only insofar as the damages are (i) typically associated with the contract and (ii) foreseeable.

(6) Any further liability shall be precluded without consideration for the legal nature of the claims being asserted; such shall also apply, but not be limited to, claims sounding in tort or claims for compensation for fruitless expenditures in lieu of performance. Insofar as our liability is precluded or limited, such shall also apply to the personal liability of our salaried employees, other employees, co-workers, representatives, and vicarious agents.

(7) Any compensatory damages claims of the buyer's for defects shall lapse one (1) year from the delivery of the goods. Such shall not apply (i) in the event of an injury to life, limb, or health for which we or our legal representatives, or our vicarious agents are responsible, or (ii) if we or our legal representatives have acted maliciously or with gross negligence, or (iii) if our ordinary vicarious agents have acted maliciously.

### 10. Severability

Should a provision of this contract be or become ineffective, then such shall be without prejudice to the legal efficacy of the remaining provisions thereof.

The contracting parties shall be obligated to replace any ineffective provision of the individually stipulated part of the contract with an effective provision the purpose of which approximates the purpose of the omitted provision as closely as possible. The same shall apply if the contract contains any loopholes.