

General Delivery and Payment Terms and Conditions Covering the Delivery of Mechanical Equipment

All deliveries and services provided by Vogel & Noot Technologie GmbH and Vogel & Noot Technologičai Kft. are to be fulfilled exclusively under the conditions outlined below.

All rights and obligations, which ensue from contracts with our contractual partners as well as from the following conditions, are equally binding for both abovementioned corporations, as follows:

1. Conclusion of Contracts

1.1. Our offers are subject to amendment. Delivery contracts, other agreements and also changes and additions to concluded contracts can come into effect only with our written confirmation. The Purchaser's purchase conditions are herewith overruled. They will not be accepted either by virtue of deliveries having been made, or of other activities.

2. Prices, terms of payment

- 2.1. In the absence of special agreements, our prices are valid ex-works, plus packaging costs and VAT.
- 2.2. In the absence of special agreements, payments shall be made without deductions and free of transaction charges to our designated account, thus: 1/3 with the order, 1/3 on notification that the delivery is ready for dispatch, and the remaining amount within 30 days of delivery.
- 2.3. Purchaser is only entitled to withhold or offset payments against any counterclaims, including warranty claims, provided the counterclaims are undisputed or legally established.
- 2.4. Default of payment or increased risk to our outstanding receivables, owing to deterioration of Purchaser's creditworthiness, entitle us to call in our full outstanding balance immediately, or to demand that security is provided – without regard for the term in which any bill is due. In such cases, we are furthermore entitled only to fulfil outstanding delivery commitments upon payment in advance or security deposits. Evidence of increased risk to our outstanding receivables, owing to deterioration of Purchaser's creditworthiness, shall be a reference, as may with appropriate diligence be requested by a prudent businessperson, particularly from a bank, credit agency, or a company with business connections to Purchaser.

3. Delivery deadlines/ delivery delay

- 3.1. Delivery deadlines take effect on our acknowledgment of an order, but only once all the operational details have been clarified and all other preconditions that have to be met by Purchaser are fulfilled. Deliveries before the scheduled date, as well as partial deliveries shall be permissible.
- 3.2. Adherence to the delivery deadline is subject to correct and punctual deliveries to ourselves from our suppliers.
- 3.3. The delivery deadline shall be deemed to be kept, if the item to be delivered has left the works by the time the deadline has expired, or if notification has gone out that the item is ready for dispatch. Insofar as acceptance has been stipulated, notification of readiness for acceptance is the decisive point in time.

- 3.4 Any late requests from Purchaser for changes or additions shall extend the delivery deadline proportionately.
- 3.5. Force majeure incidents, including strikes, lockouts, or unforeseeable circumstances that make delivery impossible, despite reasonable efforts (e.g. operational disturbances, defective goods, or after-treatment), shall entitle us to postpone delivery for the duration of the impediment plus a reasonable start-up period, or fully or partially to withdraw from the contract, in regard to the portion of the contract yet to be fulfilled. This shall also apply if the aforesaid impediments occur during a delay, or if they affect a parts supplier.
- 3.6. Should Purchaser grant us a reasonable period of grace, and should we fail to meet the new deadline, Purchaser is entitled to withdraw from the contract, provided the contract is for non-bespoke mechanical equipment.

4. Dimensions, weights, number of items

- 4.1. Variations in dimensions, weights and number of items, as well as other deviations within the framework of customary tolerances, relevant DIN regulations and technical requirements, shall be permissible.

5. Dispatch and risk transfer

- 5.1. Any item that has been notified as ready for dispatch shall be taken over without delay; otherwise we shall be entitled to dispatch it as we see fit, or to store it at Purchaser's own expense and risks. We are also entitled to the latter option, if dispatch by us cannot be carried out, through no fault of our own. When they enter storage, the goods shall be regarded as having been delivered.
- 5.2. At the point of handover to the railway, the forwarding agent, or freight carrier, or, as soon as storage starts, respectively, and in any case at the latest when the goods leave the works, risks shall be transferred to Purchaser. This includes those cases where delivery is carried out by us.

6. Retention of title

- 6.1. All delivered goods remain our property until they have been paid for in full, in particular also until the relevant payment balance requests have been paid to us, regardless of the reasons why they are due to us. This also applies to payments made for a specially named account. Purchaser authorises us as of now to enter his/her business in order to pick up the delivered goods, in case of default of payment, or if facts become generally known that give rise to doubts about Purchaser's creditworthiness. When reclaiming goods we do not also terminate the contract unless we explicitly say so in writing.
- 6.2. Purchaser is obliged properly to insure at his own expense the delivered item against damage. As a precaution, with his/her placing of orders Purchaser transfers to Deliverer his/her title to any insurance payments to the amount of the contract price. He/she undertakes to notify the insurance provider of this and to inform Deliverer of this. Reassignment shall be regarded as carried out by implication as soon as full payment has been made and any other claims arising from the contract have been settled.
- 6.3. Adaptation and processing of the goods subject to retention of title shall be carried out for us as manufacturers according to §§ 414 – 416 ABGB, without any obligation on our part. When the goods subject to retention of title are processed, joined or mixed with other goods by Purchaser,

we are entitled to co-ownership of the new item, in proportion to the invoice value of the goods, subject to retention of title to the invoice value of the other goods used. If, due to joining, processing or mixing, our property ceases to exist, Purchaser already now transfers to us the property rights to the amount of the invoice value of the goods, subject to retention of title he/she is entitled to in terms of the new item, and will store them for us free of charge. The hereafter emerging co-ownership rights are considered as goods subject to retention of title in accordance with paragraph 6.1.

- 6.4. Purchaser is only authorised to sell the goods subject to retention of title in the usual course of business and only as long as he/she is not in default, provided the claims arising from the resale, in accordance with paragraphs 6.4 and 6.5, are transferred to us. He/she is not authorised to do anything else with the goods subject to retention of title. By sending copies of the relevant documents (e.g. seizure record), Purchaser must notify Deliverer without delay about seizures, confiscation or other threats to property rights from a third party.
- 6.5. Purchaser as of now transfers to us any claims arising from the resale of the goods subject to retention of title. They serve in the same way to secure the goods subject to retention of title.
- 6.6. If Purchaser sells the goods subject to retention of title together with other goods that have not been supplied by us, the assignment of dues to us only needs to be to the amount of our invoice value of the respective sold goods subject to retention of title. With the sales of goods where we have a co-ownership share in accordance with 6.1., the assignment of dues to us has to amount to our co-ownership share.
- 6.7. As long as goods are not recalled by us, Purchaser is entitled to collect receivables from sale of them, in accordance with 6.3 and 6.4. We only have the right to recall them, if Purchaser has not met the conditions of payment, or if it becomes generally known that there are doubts about Purchaser's creditworthiness. Under no circumstances is Purchaser authorised to make assignments of debts. If requested by us, he/she is obliged without delay to notify his/her customers about his dues to us and provide us with any information and documents required for their collection.
- 6.8. If the total value of existing securities exceeds the secured claim by more than 10%, we shall be obliged to release securities of our own choice.
- 6.9. Retention of title does not affect the regulations relating to risk transfer.
- 6.10. If the law applied in the area where a delivered item is located does not allow for retention of title, but it allows the retention of similar rights on the delivered item, these similar rights are deemed to be agreed between Purchaser and Deliverer. Purchaser is obliged to co-operate with the measures Deliverer wishes to take to protect his/her property, or similar security rights on the delivered item. Purchaser may be constrained to adhere to this as well as to meeting his/her duties as stated in this paragraph, without any further warning, by means of a provisional injunction, or corresponding legal measures.

7. Defective goods, warranty

- 7.1. We shall decide if any defective components will be repaired free-of-charge, or replaced by a new item. This applies to defective items that are covered by the warranty deed and when the defect becomes apparent in the course of circumstances prior to risk transfer. The decision whether we mend an item or replace it by a new one shall be ours. Replaced components shall become our property.

- 7.2. For undertaking all later improvements and replacements that Deliverer shall decide are necessary, Purchaser is obliged to contact Deliverer and allow him/her the time required and opportunity to carry out repairs or replacements. Only in a case of urgency - if operational safety is at risk, or to prevent disproportionately great damage - Purchaser is entitled to have the repair carried out either by himself or a third party and to demand compensation from Deliverer for the required expenses. In such cases Deliverer must be informed without delay.
- 7.3. The warranty deed shall cover a period of 12 months beginning from risk transfer. This applies even if dispatch, assembly, start-up or final inspection is delayed through no fault of ours. We must be given the opportunity to inspect the claimed defects. In cases of later adjustments the warranty period for the replaced item or the later improvement shall be 3 months. It shall extend cover at least until the end of the initial warranty period.
- 7.4. Any expense claims by Purchaser required for the purposes of later adjustments shall be precluded: in particular transport costs, road maintenance, labour and material costs, if the expenses increased because the delivered item had subsequently been taken to a place other than the one agreed in the contract.
- 7.5. We accept no liability specifically for unsuitable or inappropriate use, faulty assembly and/or start-up by Purchaser or a third party, for wear and tear, faulty or careless treatment, incorrect maintenance, unsuitable means of production, inadequate construction work, unsuitable building plots, chemical or electro-chemical or electrical damage, provided the fault was not ours. If we fail to meet our warranty responsibilities, or if we fail to meet them as agreed in the contract, Purchaser may retrospectively demand a rebate on a faulty item, after the expiry of a reasonable period of grace.
- 7.6. We only undertake to offer guarantees if this has been explicitly specified in writing by our legal representative and designated as such.
- 7.7. Cancellation is precluded, if the mechanical equipment has been specially manufactured for Purchaser.
- 7.8. Apart from the claims detailed in paragraph 9, further claims are precluded.

8. Copyright protection

Purchaser may use any documents and drawings left to him for their intended purpose only. They must not be made available to third parties or be published without our consent. This applies equally to construction services provided by us and to suggestions for the design and production of components.

9. Compensation, liability

- 9.1. We shall be liable to pay compensation for breach of contractual or non-contractual duties, or advisory or other collateral duties, only
 - if it was intentional,
 - if it involved gross negligence on the part of the organisation or the senior executives and auxiliaries,
 - if, and to the extent covered by the statement from our organisation, we had explicitly undertaken to offer a guarantee, and
 - if a claim exists under the Product Liability Act.
 - for culpable infringement of essential contractual duties, restricted to claims that were foreseeable when the contract was concluded and typical for this type of contract.

- for claims arising from damage to life, body or health, resulting from intentional or grossly negligent breach of duty by the organisation, senior executives, or auxiliaries.

9.2. Should a third party claim compensation from us for damages, where the cause lay within Purchaser's field of responsibility, Purchaser shall absolve us from that claim.

10. Use of software

In so far as software is included within the compass of a delivery, Purchaser is granted a non-exclusive right to use the supplied software including the documentation. It is provided for use with the designated delivery item. Only to legally permissible extents may Purchaser make copies of the software, revise or translate it, or change the object code into the source code. Purchaser is not permitted to remove or change the manufacturer's details – in particular the copyright markers. All other rights relating to the software and documentation remain with us. Granting sub-licences is not permissible.

11. Place of performance and place of jurisdiction

The place of performance is 8661 Wartberg. The place of jurisdiction is Leoben. We are also entitled to take legal action in Purchaser's general place of jurisdiction.

12. Applicable law

For all legal dealings between Purchaser and us, substantive Austrian Law, precluding any directive regulations, shall apply exclusively.

Last updated: March 2011