

## **General Delivery and Payment Terms and Conditions Covering the Delivery of Components and Systems**

All deliveries and services provided by Vogel & Noot Technologie GmbH and Vogel & Noot Technologiai 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, on-call arrangements and 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. Our prices are valid ex-works, plus packaging costs and VAT to the amount stipulated by law.
- 2.2. In the absence of special agreements, payments shall be made without deductions upon receipt of our invoice and upon delivery, or partial delivery.
- 2.3. Purchaser is only entitled to withhold or offset payments against any counterclaims, provided the counterclaims are undisputed and 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 do not take effect before all the operational details have been clarified and all other preconditions that have to be met by Purchaser are fulfilled. Adherence to the delivery deadline is subject to correct and punctual deliveries to ourselves from our suppliers. Deliveries before the scheduled date, as well as partial deliveries shall be permissible.
- 3.2. For on-call delivery contracts, should the call be delayed, Deliverer shall be entitled to schedule the delivery of the goods, after allowing a period of grace, or withdraw from the delivery contract, in regard to the portion of the contract yet to be fulfilled.
- 3.3. If Deliverer is behind schedule with delivery, Purchaser is entitled to withdraw from the contract after granting us in writing a reasonable period of grace. The Purchaser's right to withdraw from the

contract shall apply only to the portion of the contract yet to be fulfilled. Purchaser shall only be entitled to withdraw from the whole of the contract if the partial delivery is of no use to him/her.

- 3.4. Our compensation for detriment caused by delay shall be as follows: for slight defaults the penalty is limited to extra freight costs and late fitting costs, after a fruitless period of grace, and in cases where interest in delivery lapses, compensation shall be paid for the additional expenses involved in making the purchases. For the amount of compensation the following should be taken into bona fide consideration in our favour: Deliverer's economic circumstances, the mode, extent and duration of the business relationship, and, should the occasion arise, also the value of the parts from our suppliers.
- 3.5. Force majeure incidents, including strikes, lockouts, or unforeseeable circumstances (also intra-company) that make delivery impossible, despite reasonable efforts, 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. With major delays Purchaser may ask us to state within 2 weeks, if we want to withdraw from the contract or deliver within a reasonable period of grace. If we do not give any statement, Purchaser shall be entitled to withdraw from the contract, in regard to the portion of the contract yet to be fulfilled.

#### **4. Dispatch and risk transfer**

- 4.1. The delivery generally takes place ex works. 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 risk. When they enter storage, the goods shall be regarded as having been delivered.
- 4.2. At the point of handover to the railway, the forwarding agent, or freight carrier risks shall be transferred to Purchaser. This includes those cases where delivery is carried out by us.

#### **5. Retention of title**

- 5.1. 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. In these cases we shall also be entitled to prohibit the goods subject to retention of title being adapted, or processed, or sold.
- 5.2. 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.
- 5.3. 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 5.1.

- 5.4. 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 5.3. und 5.5. 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.
- 5.5. 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.
- 5.6. 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 5.1. the assignment of dues to us has to amount to our co-ownership share.
- 5.7. As long as goods are not recalled by us, Purchaser is entitled to collect receivables from sale of them, in accordance with 5.3. and 5.4. 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.
- 5.8. 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.
- 5.9. Retention of title does not affect the regulations relating to risk transfer, in accordance with paragraph 4.
- 5.10. 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.

## **6. Warranty rights**

- 6.1. The legal regulations about material defects and defects of title apply, provided nothing in the following was arranged differently. Decisive for the contractual condition is the moment of risk transfer. Regarding manufacturing according to a drawing provided by Purchaser, we are only liable for

the execution according to the drawing, but not for functionality. We only assume liability if this has been explicitly specified in writing by our legal representative and designated as such. The warranty deed shall cover a period of 12 months beginning from risk transfer.

- 6.2. It is for Purchaser to check goods, in accordance with § 377 UGB, and send us a notice of defects he/she has found within an appropriate period of time.
- 6.3. We must be given the opportunity to inspect the claimed defects. Provided the notice of defects was justified and in due time, we shall decide if any defective components will be repaired or replaced by a defect-free item. If we fail to meet our warranty responsibilities, or if we fail to meet them as agreed in the contract, Purchaser is entitled to withdraw from the contract or may demand a rebate on the faulty item, after the expiry of a reasonable period of grace. Apart from the claims detailed in paragraph 9, further claims by Purchaser for the purpose 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 to be taken to a place other than the one agreed in the contract.
- 6.4. As far as parts that remained indirect or direct unchanged are delivered to the consumer by Purchaser, the legal regulations apply instead of the paragraphs 6.1. and 6.3. However, also in these cases we are only liable for claims for damages as stipulated in paragraph 9.

## **7. Order-related production equipment**

- 7.1. Order-related production equipment, such as models, moulds, tools, special devices etc that are provided by Purchaser, are to be sent to us without charge. Only when there is an explicit agreement to do so, shall we check if the production equipment provided by Purchaser complies with the specifications stipulated in the contract, or the drawings, or samples handed over to us. We shall be entitled to adjust the production equipment provided by Purchaser, if we consider this necessary on technical grounds and if the item concerned is not changed by this.
- 7.2. Purchaser shall bear the costs for any adjustment, maintenance and replacement of his production equipment.
- 7.3. We shall treat and store the production equipment, with the same care as we exercise for our own affairs. We shall not be obliged to take out insurance. We shall be entitled to return any production equipment provided by Purchaser that is no longer required by us, at his/her own expense and risk, or to dispose of them in the event that Purchaser does not comply with our request to pick them up within an appropriate period.
- 7.4. Order-related production equipment manufactured or provided by us to Purchaser's order shall remain our property, even when Purchaser bears the costs either in full or in part. We shall store them for a period of 3 years after the termination of the production run.
- 7.5. Should single-use production equipment produce an output of defective goods, Purchaser is obliged either to provide new production equipment or to bear the cost of replacement equipment.
- 7.6. Components that we are to build into our products shall be supplied to us by Purchaser with accurate dimensions and in faultless conditions. Where components cannot be used because they are defective, Purchaser shall be obliged to supply us with replacements free-of-charge.

## **8. Copyright protection**

Purchaser may use any documents and drawings left to him for their intended purpose only. This applies equally to services provided by us and to suggestions for the design and production of components. They must not be made available to third parties or be published without our consent. Any drawings and other documentation relating to the offer must be returned to Deliverer without delay at his request, if the order is not placed with Deliverer or is completed.

## **9. Compensation, liability**

- 9.1. With regard to anticipated end-use Purchaser shall bear the responsibility for appropriate construction respecting any safety regulations, for the choice of materials and required testing methods, for the correctness and completeness of delivery specifications, and for the documentation and drawings provided, as well as for the assembly of the equipment and components provided, even in cases where adjustments are suggested by us that meet with Purchaser's approval. Furthermore Purchaser is answerable for the fact that the data he supplies do not infringe any trade mark rights or other rights of third parties.
- 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.
- 9.3. 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.

## **10. 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.

## **11. Applicable law**

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

Last updated: March 2011