

VERMAY – GTC

1. General provisions

1.1 All deliveries, other services and offers shall be governed exclusively by the following terms and conditions.

1.2 These terms and conditions shall therefore apply to all future business relations, even if they are not again expressly agreed or are not attached to correspondence with the buyer in individual cases. These terms shall be deemed accepted at the latest on receipt of the goods or service. Any counter-confirmation of the customer with a reference to his or her terms is hereby rejected. This shall also apply in cases where the customer has prescribed a specific form for such rejection. Any deviation from these terms and conditions shall only be binding for us if we have given our written confirmation. The delivery of our products shall in no case mean that we acknowledge possible general terms and conditions of the customer.

2. Conclusion of contract, notification duties in electronic commerce

2.1 Our offers are subject to change without notice and non-binding. They shall only become binding on our confirmation of an order. We reserve the right to make technical modifications within reasonable limits, likewise to adapt our products to a later standardisation.

2.2 The minimum order value shall be EUR 100.00 (net) per order.

2.3 By ordering the goods the customer bindingly declares that s/he wishes to purchase the ordered goods (contract offer). We shall have the right to accept this contract offer within two weeks from the date of our receipt of the offer. Apart from by written order confirmation an acceptance of the contract offer may also be effected by sending the ordered goods.

2.4 In the case of orders placed by means of electronic commerce (fax/e-mail/online shop) a confirmation of receipt of the order shall not yet constitute a binding declaration of acceptance of the contract offer, unless such acceptance is expressly declared in the confirmation of receipt.

2.5 The contract shall be concluded subject to the reservation of timely and correct delivery of the goods to us by our supplier. This shall only apply in cases where we are not responsible for non-delivery. We shall not be responsible for non-delivery

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in particular if a due and proper congruent covering transaction has been concluded. If we do not receive a timely or correct delivery from our suppliers, we shall inform the customer of this and immediately refund a possible advance payment.

2.6 We may refuse to perform a service we are obliged to render under a concluded contract according to section 321 of the German Civil Code (Bürgerliches Gesetzbuch – BGB) if it becomes apparent after conclusion of a contract that our entitlement to consideration is jeopardised by an inability to perform on the part of the customer due to a deterioration of the customer's assets, in particular due to a notification that a petition for insolvency proceedings has been filed. After the expiry of a reasonable period for providing consideration or a security reciprocally and simultaneously against the performance of our service we may withdraw from the contract.

3. Pricing

3.1 Prices are quoted in EUR ex works (50259 Pulheim) exclusive of freight, insurance and exclusive of VAT. Prices do not include taxes, fees, customs duties or similar charges that arise outside the Federal Republic of Germany due to the conclusion or implementation of the order. If we are required to pay such charges the customer shall be obliged to refund these expenses. The prices quoted in our order confirmations shall always be decisive plus the respectively applicable statutory VAT.

3.2 Confirmed prices of an order shall not be binding for follow-up orders of similar parts.

4. Payment terms

4.1 Unless otherwise agreed, our invoices shall be payable within 8 days from receipt of the invoice less a 2 per cent discount or within 30 days net without any deduction. After the expiry of this term the customer shall be in default of payment.

4.2 By way of derogation 100% of the consideration shall be payable on conclusion of a contract (advance payment) if we enter into a supply relationship with the customer for the first time on /by conclusion of the contract (first order) or if the customer is repeatedly or permanently in default of payment for orders that have already been executed.

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4.3 We shall have the right to first set off payments against older debts of the customer. If costs and interests have already arisen, we shall have the right to first set off the payment against the costs and then against the interest and finally against the principal debt.

4.4 A payment shall not be deemed effected until we can dispose over the amount. In the case of payment by cheque or bill of exchange, for which we reserve the right of acceptance in individual cases, payment shall not be deemed effected until the cheque or bill of exchange have been honoured. The associated costs and expenses shall be borne by the customer.

4.5 A customer who is in default of payment shall pay interest of 9 percentage points over the basic interest rate on a cash debt according to section 247 of the German Civil Code (BGB). We expressly reserve the right to claim further default-related damages for which specific evidence is to be provided.

4.6 If the customer fails to meet his or her payment obligations, in particular fails to honour a cheque or bill of exchange or discontinues his or her payments, or if we learn of other circumstances that cast doubt on the customer's creditworthiness in a measure that is significant for the business relationship, we shall have the right to declare the entire remaining debt due for payment, even if we have accepted cheques or bills of exchange. In this case we shall also have the right to demand advance payment or the provision of a security.

4.7 As long as the customer is in default of payment of due invoice amounts or advance payments (including possible default interest) within the context of a contractual relationship with us, we shall not be obliged to deliver or to perform any other contractual services of any kind.

4.8 The customer shall only be entitled to set off, withhold or reduce payment – even if defects or counterclaims are being asserted – if such counterclaims have been established as legally enforceable or are undisputed. A retention right may only be exercised if the counterclaim originates from the same legal relationship.

5. Delivery terms, delays in delivery

5.1 Delivery terms shall commence on conclusion of a contract but not before all specifications, measurements or documents that may be necessary for execution of the order have been communicated to us by the customer.

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5.2 Adherence to the delivery terms shall require that the customer has fulfilled his or her contractual obligations.

5.3 Even if binding dates and terms have been agreed, we shall not be liable for delays in delivery and performance that are caused by force majeure or events for which we are not responsible that substantially impede our delivery or make it impossible (this includes, for example, strike, lockout, official decrees, etc.) and such circumstances occurred or became known to us after conclusion of the contract. This shall also apply to such circumstances that occur with our suppliers or their suppliers. In such an event we shall have the right to postpone delivery or performance for the duration of the impediment plus a reasonable start-up period.

5.4 If the impediment to performance lasts for a period of more than 2 months after the originally effective delivery term, we shall have the right to withdraw fully or partly from the contract on account of the not yet fulfilled part. The customer shall in this case also have the right to withdraw from the contract. This shall apply without prejudice to further statutory withdrawal rights of the customer. If the delivery should require more time or if we are released from our obligation, this shall not give the customer reason to claim compensation.

5.5 We may only invoke the circumstances mentioned in clauses 5.3 and 5.4 if we notify the customer within a reasonable term of the occurrence of these events.

5.6 We shall assume liability in the case of a delay in delivery caused by gross negligence for each complete week of delay within the scope of a lump-sum compensation of 1 per cent of the value of the goods delivered but no more than 5 per cent of the value of the goods delivered. Further statutory claims and rights of the customer shall remain reserved.

6. Delivery contracts on call

6.1 In the case of delivery contracts on call the customer shall be obliged to agree on a call-off period with us and to divide the entire amount of the delivery contract into instalments over the call-off period and to call off and purchase the corresponding instalments. Once the total amount has been produced any subsequent modifications to the ordered goods shall not be possible.

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6.2 If no call-off period is specified, we shall be entitled after the fruitless expiry of the usual call-off period to set a reasonable call-off deadline according to the circumstances and to demand purchase and payment of the total amount after its fruitless expiry. This shall apply without prejudice to our further statutory rights.

6.3 If the total amount is not divided, we shall have the right to produce the total amount of the order according to our production plan at any time of the call-off period.

6.4 If an instalment is not purchased, the customer shall be in default of purchasing this instalment on the expiry of one week after notification that the goods are ready for dispatch. If the customer is in default by more than one month we shall have the right to demand purchase and payment of the remaining amount that has not been purchased by this date within three months. On expiry of this deadline the customer shall be in default of purchasing the total amount. The customer shall be obliged to compensate us for all costs and damages caused by the default. This shall apply without prejudice to our further statutory rights.

6.5 If unforeseen increases in material and wage costs should occur during the term of the contract for which we are not responsible, a price adjustment in the same proportion as the cost increase shall be deemed agreed. The agreed prices cannot be adjusted for any other reason, especially not if a competitor offers a lower price.

7. Shipment, packaging, passage of risk and acceptance

7.1 The smallest packaging unit is specified for most of our catalogue products. If the customer provides no express instructions for packaging and shipment, we reserve the right to choose the packaging and transport route. Depending on the total amount of the delivery we shall choose – at our discretion – the most favourable packaging unit and mode of shipment. Packaging material that does not need to be returned according to the German Packaging Ordinance (Verpackungsverordnung), shall be invoiced at cost price.

7.2 The risk of accidental destruction, accidental damage or accidental loss of the sold goods as well as the price risk shall pass to the customer on delivery of the goods to the transport company. In the case of transport damages

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the customer shall immediately lodge a complaint after receipt of the shipment towards the freight forwarder or transport company and a written confirmation shall be issued.

7.3 We shall only take out transport insurance, unless otherwise agreed, within the scope of the provisions according to RVS/SVS (haulage insurance/forwarder's risk insurance).

8. Defects, warranty

8.1 A warranty shall apply to the goods delivered by us in accordance with the following provisions, which comprise the final warranty rules and do not constitute a guarantee in a legal sense. In the case of merchandise these provisions shall apply without prejudice to possible manufacturer guarantees. Claims for defects on the part of the customer shall require that the customer has duly and properly met his or her owed inspection and complaint obligations (clause 8.4).

8.2 In the case of bulk articles (automatic turned parts and stamped parts) deliveries that exceed or fall short of the order or call-off amount by up to 10 per cent are standard for the industry and permitted within the scope of the contract.

8.3 The warranty period shall be 12 months. It shall start on the delivery date. If our technical instructions are not complied with or if the products are modified, the warranty shall not apply unless the customer provides evidence that the defect in question was not caused by these circumstances.

8.4 The customer shall notify us of any obvious defects immediately but no later than within 8 days of receipt of the delivered goods in writing, giving a precise description of the defect. Defects that cannot be detected despite a careful examination within this period shall be reported to us immediately after their detection in writing, giving a detailed description. In the case of a violation of these provisions any assertion of warranty claims shall be ruled out. The full burden of proof for all entitlement requirements, in particular for the defect itself, the time of its detection and timeliness of the complaint shall be on the customer.

8.5 In the case of a justified notification of defects we shall have the choice of remedy either by rectifying the defect or delivering a replacement.

8.6 If we should fail to remedy the defect within a reasonable term set by the

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customer, the customer shall have the choice between a lower consideration (reduction), a cancellation of the contract or compensation. However in the case of only a slight non-conformity of the performance with the contract, in particular if the defects are only minor, the customer shall have no right of withdrawal and no entitlement to compensation.

8.7 If the customer chooses to withdraw from the contract due to a legal or material defect after a failed remedy, s/he shall not be entitled to an additional claim to compensation due to the defect. If the customer chooses to claim compensation after a failed remedy, the defective goods shall remain with the customer if this is reasonable for the customer. The amount of compensation shall be limited to the difference between the purchase price and the value of the defective item. In addition, the provisions of clause 9 shall apply to compensation.

8.8 Only our product description shall be decisive for the quality of our products unless expressly agreed otherwise. In the case of custom-made products only the drawing created by us for approval and signed by the customer or the sample made by us for approval on the basis of the customer's drawing shall be decisive. Any samples made by the customer shall only serve to verify the drawing made for approval, this sample shall entail no quality description.

8.9 Any liability for the suitability of the product for the intended purpose of the goods, their correct design, compliance with safety regulations and design regulations as well as the suitability of the material shall be ruled out if we work according to relevant customer specifications.

8.10 If the customer's design contains specifications that we consider critical or unfeasible from the production engineering aspect, we shall inform the customer of this submitting a counterproposal. The customer shall in this case be obliged to check our suggested changes for usability in his or her production under his or her own responsibility. We shall make no promises and accept no liability regarding the suitability of our suggested changes for the customer's purposes.

8.11 Only our direct contract partner shall be entitled to warranty claims against us and they shall not be assignable.

8.12 We shall only accept returns that are not due to defects of the goods if we have given our prior written consent. The costs of returns shall be borne by the customer. We shall credit the initial purchase price of the returned goods minus

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a standard deduction of 15% for the incoming goods inspection, storage and commercial handling.

9. Responsibility

9.1 Subject to clause 8.6. we shall not be liable towards the customer for compensation.

9.2 The restriction of liability under clauses 8.6 and 9.1 shall not apply to our liability:

(a) for guaranteed qualities within the meaning of section 444 of the German Civil Code (BGB),

(b) for claims for damages resulting from injuries to life, body or health caused by an intentional or negligent breach of obligations on our part or an intentional or negligent breach of obligations by one of our legal representatives or vicarious agents,

(c) for claims for other damages caused by an intentional or grossly negligent breach of obligations on our part or an intentional or grossly negligent breach of obligations by one of our legal representatives or vicarious agents,

(d) due to the violation of important contractual obligations (cardinal obligations within the meaning of clause 9.3) or

(e) according to the German Product Liability Act (Produkthaftungsgesetz).

9.3 Cardinal obligations within the meaning of clause 9.2 lit. (d) are obligations of which the violation jeopardises the achievement of the contractual purpose or without which the due and proper implementation of the contract would not be possible and upon the fulfilment of which the customer regularly relies.

9.4 We shall not be liable (regardless of the legal grounds) for damages that are typically not to be expected in the case of a normal utilisation of the goods. This shall not apply in the case of intent or gross negligence.

10. Reservation of title

10.1 Until the full settlement of all, even future and contingent claims arising from the business relationship – including interest and costs – we shall reserve title to the delivered goods. If so requested by us, the customer shall be obliged to separately store the goods delivered subject to a reservation of title and to

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take out insurance for them, as far as such an insurance is usually and typically concluded, and shall provide evidence of this to us on demand. In the case of payment of the purchase price by cheque or bill of exchange our reservation of title shall not already expire when the customer's cheque is honoured but only when the last refinancing paper is redeemed.

10.2 The customer shall have the right to dispose over the reserved goods – also after further processing – in the due and ordinary course of business. However, until the full payment of his or her purchase price claim s/he shall reserve title. The customer may not pledge the reserved goods or assign them as security and shall notify us immediately of any effected seizure by third parties or other action by third parties giving them access to the reserved goods.

10.3 If the customer processes or converts the goods delivered by us or combines or mixes them with other goods that do not belong to us, such processing or conversion shall be performed free of charge for us as a manufacturer. We shall correspondingly acquire title or co-title in the proportion of our product in the total value added of the item produced by processing. The customer shall store the newly created item for us free of charge. If the customer combines or mixes our goods with goods of other suppliers we shall proportionally become co-owners of the new item. Insofar as we become owners or co-owners of new items created by processing, conversion, combination or mixing, the provision applicable to reserved goods shall also apply to such an item or our co-owned part.

10.4 The customer shall already assign to us, subject to the condition precedent of the time of their occurrence, the claims arising to him from the resale. If the reserved goods are resold after being combined – in particular with goods that do not belong to us – such assignment shall only apply to the amount of the sales value of our reserved goods. If the third-party debt is higher than our claim, the claim against the third-party purchaser shall only be assigned to us to the extent that it corresponds to the value of our reserved goods.

10.5 The customer shall have the right to collect the claims assigned to us from the third-party purchaser on our behalf. However, s/he shall immediately transfer the collected amounts to us. We reserve the right to collect the claim directly from the third-party purchaser whose name we shall be informed of for this purpose.

10.6 In the event of a breach of contract by the customer, in particular a default of payment or violation of the obligations according to para. 1 and 2, we shall have the right to withdraw from the contract and demand that the goods be surrendered to us without prejudice to further statutory rights due to this breach of obligations by the customer.

11. Intellectual property rights, copyright, secrecy

11.1 The customer shall vouch for the fact that the goods that we produce according to his or her specifications do not violate intellectual property rights of third parties. If we are held liable by third parties for the production or delivery of such products due to an alleged violation of intellectual property rights, the customer shall hold us harmless against all claims. We shall only conduct defence proceedings in such cases if the customer asks us to do so making a binding declaration that s/he will assume the costs of such proceedings. In this case we shall have the right to demand a security for the judicial costs.

11.2 The customer shall be contractually obliged to use documents and drawings made available to him or her as well as constructive services performed by us and suggestions for the design and production of our products only for the agreed purpose. S/he shall not be permitted to make them accessible to third parties nor to disclose them in publications without our consent.

11.3 Like us, the customer shall be obliged to treat all non-obvious commercial and technical details of which we reciprocally gain knowledge due to the business relationship, as a business secret. Drawings, models, templates, samples and similar objects shall not be shared with or otherwise made accessible to third parties. The reproduction of such objects shall only be admissible within the scope of operational requirements and copyright provisions.

12. Means of production, tools

12.1 Means of production (tools, production facilities) include all objects that are made for the production of ordered drawing or sample-based VERMAY products, of which the purpose is to serve for the production process of the ordered parts. If it is agreed that the customer shall bear the costs of their production in whole or in part, these costs shall always be invoiced separately from the product price.

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12.2 The costs of maintenance and correct storage and the risk of damage or destruction of the means of production shall be borne by us up to a total output to be agreed on conclusion of a contract. Clause 12.1 shall apply to the production of substitute means of production necessary due to wear and tear.

12.3 We shall always store the means of production for two years after the last delivery to our contract partner free of charge. After the expiry of this term we shall give our contract partner an opportunity to comment on further storage within 6 weeks. The storage period shall end if s/he fails to comment within these 6 weeks or no new order is placed. If a new order is placed within this period, we shall proceed according to this clause anew.

12.4 The customer shall not obtain ownership of the means of production made by us, even if s/he should bear the costs in whole or in part. The customer shall however have the right to remove the tools, if a poor quality is delivered repeatedly despite a warning notice or if we are unable to deliver after a reasonable deadline has been set.

13. Data protection

To transact the business relationship we shall collect, process and use the customer's data (address, delivered products, delivered amounts, prices, payments, cancellations, etc.) as well as, where applicable, personal data of his or her staff members communicated in the context of the business relationship to implement the business relationship. These data shall be stored until the end of the business relationship and only communicated to other companies entrusted with implementing the business relationship (e.g. payment service providers). In this context we shall comply with the provisions of the German Data Protection Act (Bundesdatenschutzgesetz) in particular.

14. Place of performance, legal venue, severability

14.1 The place of performance for delivery and payment shall be 50259 Pulheim. The legal venue for any disputes, including actions for bills of exchange, that arise directly or indirectly from the contractual relationship shall be the court with jurisdiction for Pulheim. We shall also have the right to take legal action before a court that has jurisdiction at the customer's principal place of business or a branch.

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14.2 The ineffectiveness of any individual clause hereof shall not affect the validity of the remaining provisions.

15. Business relations with customers based outside the Federal Republic of Germany

Business relations with customers based outside the Federal Republic of Germany shall be governed additionally by the provisions of this clause 14, which shall take priority over the remaining provisions of these terms and conditions, as well as German law; the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall apply subject to the following provisions:

15.1 Delivery shall be effected EXW according to Incoterms 2010.

15.2 Unless otherwise agreed, payments shall be made in EUR. Any bank fees shall be borne by the customer.

15.3 The delivered goods must be inspected immediately. A complaint that the goods do not conform to the contract shall be made immediately. In any case a limitation period of six months from the receipt of goods shall apply to complaints concerning the non-conformity of goods even in the case of hidden defects.

15.4 Any claims of the customer due to non-conformity of the goods with the contract shall expire by limitation in 6 months starting on the date of a timely complaint according to clause 15.5.

15.5 If the goods do not conform to the contract, we shall have the right by way of derogation from Art. 46 of the Convention to deliver a replacement instead of remedying the defect. In this case the customer shall provide us with the non-conforming goods at our expense.

15.6 We shall only pay compensation on the grounds that the goods do not conform to the contract if we are responsible for such non-conformity. The amount of the compensation entitlement shall be limited to EUR 25,000.