

MIG - Material Innovative Ges. mbH

– General Terms & Conditions of Business –

I. Validity of these conditions

The deliveries, services and tenders made by the Supplier are based solely on these Conditions of Business in all instances. The Supplier does not recognise any General Purchasing Conditions that the buyer may have.

II. Tender and conclusion of contract

1. Tenders made by the Supplier are subject to change and are not binding. A contract is only concluded upon written confirmation of order by the Supplier or by performance of delivery by the Supplier.
2. Drawings, pictures, measurements and weights and other data on performance are only binding if this is expressly agreed in writing.
3. The Supplier's sales personnel is not authorized to make verbal subsidiary agreements or to give verbal assurances that are at variance with written agreements or written confirmations provided by the Supplier.

III. Prices

1. Unless otherwise stated, the Supplier will be bound by the prices stated in his tenders for 30 days from the date of the tender. The prices stated in the Supplier's confirmations of order plus statutory sales tax are binding.
2. Unless otherwise agreed, the prices are FCA Hamburg in accordance with the Incoterms 2010, normal packaging inclusive.
3. Sales amounts may not exceed the buyer's credit limit.

IV. Delivery, delivery time & time of performance

1. Delivery dates or times given by the Supplier must be stated in writing.
2. The delivery time is complied with if the object to be delivered has been dispatched before the delivery time expires, or, if delivery is delayed for reasons for which the buyer is responsible, if readiness for dispatch is communicated within the agreed delivery time.
3. Compliance with the Supplier's obligations to deliver and perform assumes that the buyer fulfils his own obligations properly and punctually.

By the same token, the Supplier's compliance with said obligations is subject to his being properly and punctually supplied by his own suppliers.

Part-deliveries in appropriate quantities are permissible and may be invoiced separately.

4. Should force majeure, a strike or lockout or the consequences of industrial action or other events that are outside the Supplier's influence prevent the Supplier from fulfilling his duty to deliver and perform – even if the circumstances in question occur at the Supplier's supplier or at the supplier's subcontractor –, the Supplier is entitled to delay delivery or performance by the duration of the obstruction plus an appropriate preparation time. The Supplier will notify the buyer of the beginning and end of such obstructions without delay. If either the Supplier or the buyer cannot reasonably be expected to perform the contract because of the delay in delivery, both parties have the right to withdraw from the contract.
5. In the event of delay or impossibility of performance on the Supplier's part, the buyer has the right to withdraw from the contract in accordance with the relevant legal requirements. If the buyer has suffered damage as a result of negligence on the Supplier's part, he has the right to demand compensation up to the level of the flat-rate compensation for delay. This compensation amounts to 0.5% for each full week of delay, with a maximum amount of 5% of the value of that part of the total delivery that cannot be used on time or in accordance with the contractual conditions as a result of the delay. For any other claims arising from delay or impossibility of performance, section 8 of these Conditions of Business applies.

V. Responsibility for risk

The risk passes to the buyer as soon as the consignment has been handed over to the person responsible for transport, or has left the Supplier's warehouse to be dispatched, or, if the delivery date has been exceeded, at the time when the buyer is informed that the consignment is ready for dispatch.

VI. Liability for defects

1. The reference samples that the Supplier will present to the buyer at the latter's request shall be relevant for the quality and workmanship of the products.
2. The buyer must check the merchandise without delay upon receipt. Notification of any defects must be made in writing and without delay: obvious and perceptible defects must be notified within 7 days at the latest, hidden defects at the latest within 7 days of discovery. All tin containing products must be checked immediately after arrival.
3. If there are defects that the Supplier is responsible for, he is obliged without charge either to make the necessary repairs, or to replace the parts that are demonstrably defective as a result of circumstances that occurred before the passing of the risk.
4. If such remedy fails conclusively, or if the Supplier allows a period given to him for subsequent performance to expire without result through his own fault, or if the Supplier refuses such remedy, or if such remedy is impossible or cannot reasonably be expected of the buyer, then the buyer is entitled to withdraw from the contract or to demand a reduction in the purchase price. However, if there are only small deviations in the measurements and/or workmanship that do not detract from the product's function, the buyer may only claim a reduction in price.
5. Before processing the merchandise delivered, the buyer is under obligation to check the merchandise to ensure it is suitable for the intended use, even if samples were supplied beforehand.
6. Claims based on defects according to § 437 of the German Civil Code become statute-barred and can no longer be pursued 12 months after delivery.
7. For compensation liability, see section IX of these Conditions of Business.

VII. Retention of title

1. The merchandise remains the Supplier's property until all claims arising from the business connection have been settled in full, including subsidiary claims, and cheques and bills of exchange have been cleared.
2. The retention of title continues to apply if individual claims on the Supplier's part are added to an open account and the balance is drawn up and acknowledged.
3. If the buyer turns merchandise subject to retention of title into a new piece of movable property, he does this on the Supplier's behalf, without any obligation for the Supplier arising there from. The new item becomes the Supplier's property. If such merchandise is processed, combined, mixed or blended with merchandise that does not belong to the buyer, the Supplier gains part-ownership of the new item in the ratio of the invoice amount of his title-retained merchandise to the value of the remaining processed, combined, mixed or blended merchandise at the time of the processing, combination, mixing or blending; the buyer will hold this in safekeeping with due commercial care for the Supplier.
4. The buyer is entitled to resell, further process or install the title-retained merchandise only with due attention to the following provisions and only on the condition that the claims arising from the resale are transferred to the Supplier in accordance with section 5.

The buyer's authorisation to sell, process or install title-retained merchandise in in the ordinary course of business ends with its revocation by the Supplier as a result of a deterioration in the buyer's creditworthiness that has become known, or at the latest when the buyer ceases to make payments or applies for insolvency proceedings to be opened for his assets.

5. The buyer herewith assigns in advance to the Supplier all

claims to which he is entitled, either now or later, from the resale of the merchandise supplied by the Supplier or for any other legal reason, to the value of the title-retained merchandise. The Supplier accepts the assignment. The value of the title-retained merchandise is the amount of the Supplier's invoice plus a security surcharge of 10%, which, however, will not be taken into account if third party rights stand in its way. In the event that the Supplier's merchandise is resold after processing, combination, mixing or blending, or in the event that the new item produced by processing, combination, mixing or blending is resold, the claim on the buyer's customer to the amount of the invoice value of the Supplier's processed, combined, mixed or blended merchandise will be assigned, or, if this amount is lower, only to the amount corresponding to the Supplier's share in the jointly-owned property. This also applies in the case of resale after the Supplier's merchandise has become an integral part of another item as a result of processing, combination, mixing or blending.

If the buyer has sold the claim within the framework of genuine factoring, the Supplier's claim is due with immediate effect; in this case, the buyer will assign to the Supplier the claim on the factor that takes the place of the Supplier's claim, and will pass on to the Supplier without delay the proceeds of his sale.

6. The buyer is authorised to collect the assigned claims, as long as he honours his own financial commitments. The authorisation to collect expires when it is revoked, or at the latest when the buyer defaults on payment, or if it becomes evident after the contract has been signed that the claim for payment is endangered by limited ability to pay on the part of the buyer. In this case, the Supplier is herewith authorised by the buyer to notify the customer of the assignment and to collect the claim himself. The buyer is then under obligation to let the Supplier have on demand an exact list of the claims to which the buyer is entitled, with the customers' names and addresses, the amounts of the individual claims, invoices dates etc., and also to let the buyer have the information he needs to assert the claims assigned and to allow him to check that this information is correct.
7. If the value of the collateral given to the Supplier exceeds his claims by a total of more than 10%, the Supplier is obliged, if the buyer so demands, to release collateral of his choice to the corresponding amount. With the repayment of all of the Supplier's outstanding claims from the business connection, the ownership of the title-retained merchandise and the assigned claims will pass to the buyer.
8. The buyer is not allowed to pledge or make collateral assignment of the title-retained merchandise or of the assigned claims. In the event of attachment or seizure, the Supplier must be notified immediately, stating the identity of the pledgee.
9. If the Supplier takes back the item delivered because of retention of title, this only represents a withdrawal from the contract if the Supplier expressly so states. The Supplier is entitled to satisfy his claims by privately selling part or all of the title-retained merchandise taken back.
10. The buyer will hold the title-retained merchandise in safekeeping for the Supplier without charge. He is required to insure the merchandise to the customary extent against fire, theft and water damage. The buyer herewith assigns to the Supplier his claims for compensation against insurance companies (or against other persons required to provide compensation) arising from damage of the kind referred to, to the amount of the invoiced value. The Supplier accepts this assignment.

VIII. Terms of payment

1. Insofar as not otherwise agreed, the Supplier's invoices are due for payment without deduction 30 days after invoicing to VR Factorem.

The Supplier is entitled, notwithstanding any buyer's provisions to the contrary, to deduct payments made from the buyer's outstanding debts; he will inform the buyer of any such offsetting. If costs and interest have accumulated, the Supplier is entitled to offset the payment first against the costs incurred, then against the interest due, and finally against the principal claim.

2. A payment is regarded as having been made when the Supplier has the amount at his disposal. In the case of cheques, payment is regarded as having been made when the cheque has cleared.
3. Interest 8% above the base rate will be charged for any periods of default.
4. If it becomes evident after the contract has been concluded that the Supplier's claim for payment is endangered by limited ability to pay on the part of the buyer, the Supplier is entitled to demand payment of the entire outstanding debt, even if he has accepted cheques or bills of exchange. In this event, the Supplier is also entitled to ask for advance payment or the provision of collateral.
5. Offsetting is only allowed against counterclaims that are uncontested or acknowledged as being *res judicata* by the Supplier. The same applies to the exercise of a right of retention or a right to refuse performance.

IX. Limitations of liability

Irrespective of the provisions of section IV. 5. above, claims for damages of any kind both within and outside the Supplier's warranty – e.g. as a result of default or inability to perform, on account of the infringement of other contractual obligations, arising from negligence upon conclusion of contract, from a tortious act or from any other legal basis, and especially claims for damages not suffered by the actual item delivered – are excluded. Liability only applies in the event of intent or gross negligence, in the event of culpable injury to life, body, or health, in the event of defects that were not disclosed with fraudulent intent, if a guarantee was given as to the quality of the merchandise or in the event of defects in the item delivered, insofar as liability applies according to the Product Liability Act for damage to privately used property and to physical injury.

The Supplier is also liable if material contractual obligations are violated; in this case, however, liability is limited – except where gross negligence has occurred – to contractually typical damages such as can reasonably be anticipated.

X. Applicable law, legal venue

1. The place of performance is the Supplier's head office.
2. The legal venue for all disputes with businessmen or with persons who do not have a general domestic legal venue – this also applies to legal action arising from cheques or bills of exchange – is principle place of business of the Supplier. The Supplier is also entitled to institute legal proceedings against the buyer at his general domestic legal venue.
3. German law applies. The United Nations Convention dated 11.04.1980 on contracts for international sales of goods (CISG) shall not apply. The latest version of the Incoterms 2010 apply.