



Terms and Conditions of Purchase – ViscoTec Pumpen- u. Dosiertechnik GmbH

1. Scope of validity

These General Terms and Conditions of Purchase shall apply exclusively to all purchases from entrepreneurs within the meaning of Section 14 BGB (German Civil Code), an association, a foundation, a legal entity under public law or a special fund under public law. Our Terms and Conditions of Purchase shall apply exclusively. General terms and conditions or terms and conditions of sale of the supplier that deviate from, are in conflict with, or add to these terms and conditions shall only become a component part of the contract if and to the extent that we have expressly given our consent to their validity.

Individual agreements made with the supplier in individual cases (including ancillary agreements, additions and amendments) shall have priority over these Terms and Conditions of Purchase in every case. Subject to counterevidence, a written contract or our written confirmation shall be authoritative for the content of such agreements.

References to the validity of statutory provisions shall be purposes of clarification only. Unless indirectly amended or expressly excluded in these Terms and Conditions of Purchase, statutory provisions shall thus apply even without such clarification.

2. Order

Quotations issued to us must use the same order quantity, product designation, condition of goods and delivery times as stated in our enquiry and shall be free of charge and non-binding for us. The supplier shall make specific reference to changes to the quotation in relation to our enquiry.

Orders shall only be binding for us if we have accepted them within 14 days. If the supplier modifies the order, a contract shall only come into existence if we have declared our consent to said modification.

3. Deliveries

The agreed delivery dates shall be fixed dates. If the supplier is in default, we may choose whether to demand subsequent delivery and compensation for damages caused by the delayed delivery or compensation for damages caused by non-fulfilment.

In the event of force majeure, the arrangement of official measures, strikes, internal unrest that affect our operation and that we are unable to remedy in good time using reasonable means, we shall not be held in default in acceptance. This shall not cause the contract to terminate automatically. We shall undertake to inform the supplier of an obstacle of this nature and adjust our obligations to the changed circumstances in good faith.

The supplier alone shall be responsible for the correct packaging and the correct shipment of the goods. We shall only assume transport costs where this has been agreed and even then only for the lowest priced type of dispatch. We shall not accept transport costs for partial deliveries not accepted in writing.

If we return packaging materials to the supplier free from transportation charges, we shall receive credit for this in the amount of the invoice amount accrued for this. The risk for possible loss and possible deterioration of the goods shall transfer to us upon delivery to the place of fulfilment. If an acceptance test has been agreed, this shall be authoritative for the transfer of risk. In all other respects, the statutory provisions of contract law shall apply accordingly in the event of an acceptance test. Handover or acceptance shall be deemed to have been made if we are in default in acceptance.



4. Payment

The agreed prices shall be fixed prices.

We shall make payments, subject to agreements made and recorded in writing to the contrary, as follows:

With a 3% discount up to 14 days of receipt of the goods and without deductions 30 days of receipt of the goods and invoice.

However, our payments shall be made under reservation and shall not constitute recognition of terms and conditions of purchase of the supplier. In other respects, these shall not apply as confirmation that a delivery has been made correctly.

Claims against us may not be assigned to third parties without our express consent. The provision of Section 354a HGB shall not be affected by this non-assignment clause.

5. Warranty, default, limitation

In the event of liability for defects of the delivered goods, we shall be entitled to choose whether to reduce the purchase price or to demand subsequent improvement or replacement delivery, or to demand compensation for damages caused by non-fulfilment or to rescind from the contract in part or in full.

Unless specified otherwise below, the statutory provisions shall apply to our rights in the event of defects of quality and title of the goods (including incorrect or insufficient delivery and incorrect assembly, incorrect assembly, operating or user instructions) and in the event of other breaches of obligation by the supplier.

In accordance with the statutory provisions, the supplier shall in particular be liable for the goods having the agreed quality when risk is transferred to us. The agreement of the quality shall always be the product descriptions that are the subject matter of the contract in question – in particular through indication or reference in our order – or have been included in the contract in the same way, such as these Terms and Conditions of Purchase. It shall not make a difference whether the product description comes from us, the supplier or the manufacturer.

Contrary to Section 442 Paragraph 1, Item 2 BGB, we shall have claims for defects unreservedly if the defect remains unknown to us upon conclusion of the contract as a result of gross negligence.

The commercial duty to examine and to notify defects shall be governed by the statutory provisions (Sections 377, 381 HGB) subject to the following condition: Our duty to examine shall be restricted to defects which come to light during our incoming goods inspection through external survey including the shipping documents, as well as during quality control using a sampling procedure (e.g. transport damage, incorrect delivery and short delivery). If an acceptance test has been agreed, there shall be no duty to examine. In all other respects, it shall depend on the extent to which an inspection taking into account the circumstances of the individual case is feasible according to the proper course of business.

Our obligation to give notice of defects discovered at a later point in time remains unaffected.

The costs spent by the supplier for the purpose of inspection and subsequent fulfilment (including any removal and installation costs) shall be borne by the customer if it is discovered that there actually was no defect. Our liability for compensation for damages in the event that of an unjustified request for the remedying of a defect shall remain unaffected; however, in this respect we shall only be liable if we recognised or failed to recognise as a result of negligence that there was no defect.

If the supplier fails to fulfil their obligation to subsequent performance – at our discretion by remedying the defect (subsequent improvement) or by delivering a defect-free item (replacement delivery) – within an



appropriate period set by us, we may remedy the defect ourselves and demand compensation from the supplier for the costs necessary for this or a corresponding advance payment. If subsequent performance by the supplier is unsuccessful or unreasonable for us (e.g. due to particular urgency, endangerment of operational reliability or impending occurrence of disproportionate damages), there shall be no requirement to set a deadline; we shall inform the supplier of such circumstances immediately, in advance if possible.

In all other respects, in the event of a defect of quality or title, we shall be entitled to reduce the purchase price or rescind from the contract in accordance with the statutory provisions. Furthermore, in accordance with the statutory provisions, we shall have claim to compensations for damages and reimbursement of expenses.

If the supplier is in default, we may demand a contractual penalty in the amount of 1% of the net price per completed calendar month; however, this shall be no higher than 5% of the net price for the goods delivered late. We shall be entitled to demand the contractual penalty in addition to fulfilment and as the minimum amount of compensation for damages due from the seller in accordance with the statutory provisions; the exercising of claims for further damages shall remain unaffected. If we accept the delayed performance, we shall enforce the contractual penalty by the final payment at the latest. Unless otherwise agreed, the warranty period shall be two years from receipt of the goods by us.

6. Supplier recourse

We shall also be entitled without restriction to our statutorily determined rights of recourse within a supplier chain (supplier recourse according to Sections 478 and 479 BGB), as well as the claims for defects. We shall in particular be entitled to demand from the supplier precisely the method of subsequent fulfilment (subsequent improvement or replacement delivery) that we owe to our customer in the individual case. Our statutory right to choose (Section 439, Paragraph 1 BGB) shall not be restricted by this.

Before we acknowledge or fulfil a defect claim exercised by our customer (including reimbursement of expenses according to Sections 478, Paragraph 2 and 439, Paragraph 2 BGB), we shall inform the supplier and ask for a written statement, giving a brief outline of the facts. If the statement is not provided within a reasonable period of time and also no mutual resolution is brought about, the claim for defects actually granted by us shall be deemed to be owed to the customer; in this case, the supplier shall be responsible for supplying counterevidence.

Our claims arising from supplier recourse shall also apply if the goods were further processed, such as installed in another product, before we sold them to a consumer or one of our customers.

7. Manufacturer liability

If the supplier is responsible for product damage, the supplier shall indemnify us against third-party claims if and when the cause falls within their sphere of control and organisation and they themselves are liable in relation to third parties.

As part of this indemnification obligation, the supplier shall reimburse expenses according to Sections 683 and 670 BGB arising from or in relation to a third-party claim including recall campaigns carried out by us. We shall inform the seller of the subject and scope of the recall campaigns, if possible and reasonable, and give the seller opportunity to comment. Further statutory claims shall remain unaffected.

The supplier must take out and maintain a product liability obligation insurance policy with flat-rate coverage of at least EUR 10 million per personal/property damage.



8. Non-disclosure and retention of title

We shall reserve proprietary rights and copyrights to figures, plans, drawings, calculations, application instructions, product descriptions and other documentation. Such documentation must only be used for the contractual performance and must be returned after completion of the contract. This documentation must not be disclosed to third parties even after termination of the contract. The non-disclosure obligation shall only cease to apply if and to the extent that knowledge contained within the documentation provided is general knowledge.

The preceding provision shall apply accordingly to materials (e.g. software, finished and semi-finished products) as well as to tools, patterns, samples and other objects that we provide the supplier for production. So long as they are not processed, such items must be stored separately at the expense of the supplier and sufficiently insured against destruction and loss.

Processing, intermixture or combination (further processing) by the customer of items provided shall be carried out for us by the supplier. The same shall apply in the event that we further process the goods delivered with the result that we are considered to be the manufacturer and acquire ownership of the product in accordance with statutory provisions upon further processing at the latest.

The goods must be assigned to us regardless of the payment of the price. If, in an individual case, we accept an offer from the seller for the assignment of goods subject to payment of the purchase price, the reservation of title of the seller shall no longer apply upon payment of the purchase price for the delivered goods at the latest. During the ordinary course of business, we shall also be entitled to resell the goods before paying the purchase price subject to advance assignment of the claim arising from this (alternatively, validity of the simple reservation of title extended to the resale). In any event, all other forms of reservation of title shall be excluded, in particular expanded and forwarded reservation of title and reservation of title extended to further processing.

9. Liability

Unless specified otherwise in these Terms and Conditions of Purchase including the following provisions, in the event of a breach of contractual and non-contractual obligations, we shall be liable in accordance with the applicable statutory regulations.

We shall be liable to provide compensation for damages in the event of wilful intent and gross negligence – regardless of the legal grounds. In the event of ordinary negligence, we shall only be liable for

- a) damages arising from injury to life, limb or health,
- b) damages arising from the breach of a material contractual obligation (an obligation that must be fulfilled for the proper execution of the contract to be possible and in which the contracting partner routinely trusts and can trust to be adhered to); however, in this event, our liability shall be limited to compensation for the foreseeable damage that typically occurs.

The limitations of liability arising from this Item shall not apply if we have fraudulently concealed a defect or assumed a guarantee for the properties of the goods. The same shall apply to claims of the supplier in accordance with the German Product Liability Act.

The supplier may only rescind from or terminate the contract due to a breach of obligation that does not consist of a defect if we are responsible for the breach of obligation. The supplier shall not have a free right to termination (in particular in accordance with Section 651 and 649 BGB). In all other respects, the statutory requirements and legal consequences shall apply.



10. Choice of law, place of fulfilment and place of jurisdiction

The exclusive place of jurisdiction shall be Mühldorf am Inn, Germany.

The place of performance shall be the receiving office specified by us.

These Terms and Conditions of Purchase and all legal relationships between us and the supplier shall be subject to the law of the Federal Republic of Germany, to the exclusion of international uniform law, in particular the UN Sales Law.

11. Severability clause

If, for whatever reason, a provision in our Terms and Conditions of Purchase is or becomes void either in part or in whole, the validity of the remaining provisions shall not be affected. Void provisions shall be replaced by others which most closely reflect the required business purpose.

As at: October 2016