

## VSE Volumentchnik GmbH

### Section 1 Scope of application, form

1. These General Terms and Conditions of Sale (GTC) apply to all our business relationships with our customers (hereinafter also referred to as the Buyer). The GTC shall only apply if the Buyer is an entrepreneur (Section 14 of the German Civil Code (BGB)), a legal entity under public law or a special fund under public law.

2. The GTC apply in particular to contracts for the sale and/or delivery of movable goods („Goods“), irrespective of whether we manufacture the Goods ourselves or purchase them from suppliers (Sections 433, 650 of the German Civil Code (BGB)). Unless otherwise agreed, the GTC in the version valid at the time of the Buyer's order or in any case in the version last communicated to him in text form shall also apply as a framework agreement for similar future contracts without us having to refer to them again in each individual case.

3. Our GTC apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Buyer shall only become part of the contract if and insofar as we have expressly agreed to their validity. This requirement of consent shall apply in any case, for example even if the Buyer refers to his GTC in the context of the order and we do not expressly object to them.

4. Individual agreements (e.g. framework supply agreements, quality assurance agreements) and details in our order confirmation shall take precedence over the GTC. In case of doubt, commercial clauses shall be interpreted in accordance with the Incoterms® issued by the International Chamber of Commerce in Paris (ICC) in the version valid at the time of conclusion of the contract.

5. Legally relevant declarations and notifications by the Buyer in relation to the contract (e.g. setting of deadlines, notification of defects, withdrawal, or reduction) as well as subsequent amendments to the contract must be made in writing. Written form within the meaning of these GTC includes written and text form (e.g. letter, email). Statutory formal requirements and further evidence, in particular in the event of doubts about the legitimacy of the declaring party, remain unaffected

6. References to the validity of statutory provisions are for clarification purposes only. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these GTC.

### Section 2 Conclusion of contract

1. Our offers are subject to change and non-binding unless they are expressly labelled as binding or contain a specific acceptance period. This shall also apply if we have provided the Buyer with catalogues, technical documentation (e.g. drawings, plans, calculations, costings, references to DIN standards), other product descriptions or documents - including in electronic form - to which we reserve ownership rights and copyrights.

2. Information provided by us on the subject matter of the delivery or service (e.g. weights, dimensions, utility values, load capacity, tolerances, and technical data) as well as representations of the same (e.g. drawings and illustrations) are only approximate, unless the usability for the contractually agreed purpose requires exact conformity. They are not guaranteed characteristics, but descriptions or labelling of the delivery or service. Customary deviations and deviations that occur due to legal regulations or represent technical improvements, as well as the replacement of components with equivalent parts, are permissible insofar as they do not impair the usability for the contractually intended purpose. Public statements (e.g. advertising statements, general recommendations) made by us or other third parties (e.g. manufacturers) shall not be deemed to be an agreement on the quality and, in particular, shall not constitute a guarantee.

3. The legal relationship between us and the Buyer shall be governed solely by the contract concluded in writing, including these GTC. This fully reflects all agreements between us and our customer regarding the subject matter of the contract. Verbal commitments on our part prior to the conclusion of the contract are not legally binding and verbal agreements between us and the Buyer are replaced by the written contract, unless expressly agreed otherwise between us and the Buyer.

4. The order of the goods by the Buyer is deemed to be a binding contractual offer. Unless otherwise stated in the order, we shall be entitled to accept this contractual offer within 14 days of its receipt by us.

5. Acceptance can be declared either in writing (e.g. by order confirmation) or by delivery of the goods to the Buyer.

### **Section 3 Delivery period, delay in delivery, partial deliveries**

1. The delivery period shall be agreed individually or specified by us upon acceptance of the order.

Deadlines and delivery dates and services provided by us are always only approximate unless a fixed deadline or a fixed date has been expressly agreed. The delivery deadline shall be deemed to have been met if the goods have left our factory by the time it expires or if we have notified the customer that the goods are ready for dispatch. If dispatch has been agreed, delivery periods and delivery dates refer to the time of handover to the forwarding agent, carrier or other third party commissioned with the transport.

2. We shall not be liable for impossibility of delivery or for delays in delivery insofar as these are caused by force majeure or other events unforeseeable at the time of conclusion of the contract (e.g. operational disruptions of any kind, difficulties in procuring materials or energy, transport delays, strikes, lawful lockouts, shortages of labour, energy or raw materials, difficulties in obtaining necessary official permits, pandemics or epidemics, official measures or the failure of suppliers to deliver or to deliver correctly or on time despite a congruent hedging transaction concluded by us) for which we are not responsible. If such events make delivery or performance significantly more difficult or impossible for us and the hindrance is not only of a temporary nature, we are entitled to withdraw from the contract. In the event of hindrances of a temporary nature, the delivery or performance periods shall be extended, or the delivery or performance dates postponed by the period of the hindrance plus a reasonable start-up period. If the Buyer cannot reasonably be expected to accept the delivery or service as a result of the delay, he may withdraw from the contract by immediate written declaration to us.

3. We may - notwithstanding our rights arising from the Buyer's default - demand from the Buyer an extension of delivery and performance deadlines or a postponement of delivery and performance dates by the period in which the Buyer fails to fulfil its contractual obligations towards us.

4. We are only entitled to make partial deliveries if

- the partial delivery can be used by the Buyer within the scope of the contractual purpose
- the delivery of the remaining ordered goods is ensured

and

- the Buyer does not incur any significant additional work or costs as a result (unless we agree to bear these costs).
5. If we are in default with a delivery or service or if a delivery or service becomes impossible for us, for whatever reason, our liability for damages shall be limited in accordance with Section 8 of these GTCs.

6. The rights of the Buyer pursuant to Section 8 of these GTC and our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent fulfilment), shall remain unaffected.

### **Section 4 Delivery, delivery on call, transfer of risk, acceptance, default of acceptance**

1. Delivery is ex works, which is also the place of fulfilment for the delivery and any subsequent fulfilment. At the request and expense of the Buyer, the goods will be dispatched to another destination (sale by dispatch). Unless otherwise agreed, we are entitled to determine the type of dispatch ourselves (in particular transport company, dispatch route, packaging).

2. If delivery on call has been agreed, all calls shall be made by the Buyer within 12 months of conclusion of the contract at the latest, unless otherwise agreed in writing.

3. The risk of accidental loss and accidental deterioration of the goods shall pass to the buyer at the latest upon handover. In the case of sale by dispatch, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall pass to the Buyer upon delivery of the goods to the forwarding agent, carrier or other person or company designated to carry out the dispatch. If acceptance has been agreed, this shall be decisive for the transfer of risk. In all other respects, the statutory provisions of the law on contracts for work and services shall also apply accordingly to an agreed acceptance. If the Buyer is in default of acceptance, this shall be deemed equivalent to handover or acceptance.

4. If the Buyer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the Buyer is responsible, we shall be entitled to demand compensation for the resulting damage including additional expenses (e.g. storage costs). The same applies after the transfer of risk. In the event of storage by us, the storage costs shall amount to (0.25) % of the invoice amount of the delivery items to be

stored per week elapsed.

Proof of higher damages and our statutory claims (in particular reimbursement of additional expenses, reasonable compensation, cancellation) shall remain unaffected; the storage costs claimed shall be offset against further monetary claims. The Buyer shall be entitled to prove that we have suffered no loss at all or only a significantly lower loss than the above lump sum.

5. The consignment will only be insured by us against theft, breakage, transport, fire and water damage or other insurable risks at the express request of the Buyer and at the Buyer's expense.

6. In the event of delayed acceptance or late call-off, the Buyer shall owe storage fees of 1.5% per completed calendar month, based on the net sales price. The right of the Buyer to prove that the damage is actually lower remains unaffected.

7. The Buyer is obliged to return any reusable packaging used by us to us free of charge.

8. If acceptance is to take place, the purchased item shall be deemed to have been accepted if

- the delivery has been completed,
- we have informed the Buyer of this with reference to the fictitious acceptance according to this paragraph and have requested him to accept the Goods,
- 10 working days have passed since delivery or installation, or the Buyer has started to use the purchased item (e.g. the delivered purchased item has been further processed or resold) and in this case 10 working days have passed since delivery and
- the Buyer has failed to accept the goods within this period for a reason other than a defect notified to us which makes the use of the purchased item impossible or significantly impairs it.

## Section 5 Prices and terms of payment

1. Unless otherwise agreed in individual cases, our current prices at the time of conclusion of the contract shall apply in EUR, ex works, plus statutory VAT. Additional or special services shall be invoiced separately. If the agreed prices are based on our list prices and the delivery is to be made more than four months after conclusion of the contract, our list prices

valid at the time of delivery shall apply (in each case less an agreed percentage or fixed discount).

2. In the case of sale by dispatch (Section 4 paragraph 1), the Buyer shall bear the transport costs ex works and the costs of any transport insurance requested by the Buyer. Any customs duties, fees, taxes, and other public charges shall be borne by the Buyer.

3. The purchase price is due and payable within 14 days of invoicing and delivery or acceptance of the goods.

4. The Buyer shall be in default upon expiry of the above payment deadline. During the period of default, interest shall be charged on the purchase price at the applicable statutory default interest rate. We reserve the right to claim further damages caused by default. Our claim to commercial maturity interest (Section 353 of the German Commercial Code (HGB)) against merchants remains unaffected.

5. The Buyer shall only be entitled to rights of set-off or retention to the extent that his claim has been legally established or is undisputed. In the event of defects in the delivery, the Buyer's counter-rights shall remain unaffected, in particular in accordance with Section 7, paragraph 7, sentence 2 of these GTC.

6. If it becomes apparent after conclusion of the contract (e.g. through an application for the opening of insolvency proceedings) that our purchase price claim is at risk by the Buyer's inability to pay, we shall be entitled to refuse performance in accordance with the statutory provisions and - if necessary after setting a deadline - to withdraw from the contract (Section 321 of the German Civil Code (BGB)). In the case of contracts for the manufacture of non-fungible goods (customised products), we may declare our withdrawal immediately; the statutory provisions on the dispensability of setting a deadline shall remain unaffected.

7. The provision of samples is always subject to a charge.

## Section 6 Retention of title, tools

1. We reserve title to the goods sold until full payment of all our current and future claims arising from the purchase contract and an ongoing business relationship (secured claims).

2. The Goods subject to retention of title may neither be

pledged to third parties nor assigned as security before full payment of the secured claims. The Buyer must inform us immediately in writing if an application is made to open insolvency proceedings or if third parties have access to the Goods belonging to us (e.g. seizures).

3. In the event of breach of contract by the Buyer, in particular by non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the goods on the basis of the retention of title. The demand for the return of the goods does not at the same time include the declaration of cancellation; we are rather entitled to demand only the return of the goods and to reserve the right to cancel the contract. If the Buyer does not pay the purchase price due, we may only assert these rights if we have previously set the Buyer a reasonable deadline for payment without success or if setting such a deadline is dispensable according to the statutory provisions.

4. The Buyer is authorised, until revoked in accordance with paragraph c) below, to resell and/or process the Goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply in addition. The customer shall store the Goods for us free of charge and shall be liable for the proper condition of the Goods.

a) The retention of title shall extend to the full value of the products resulting from the processing, mixing, or combining of our goods, whereby we shall be deemed to be the manufacturer. If, in the event of processing, mixing, or combining with goods of third parties, their right of ownership remains, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed, or combined goods. In all other respects, the same shall apply to the resulting product as to the goods delivered under retention of title.

b) The Buyer hereby assigns to us as security any claims against third parties arising from the resale of the goods or the product in total or in the amount of our possible co-ownership share in accordance with the above paragraph. We accept the assignment. The obligations of the purchaser stated in paragraph 2 shall also apply in consideration of the assigned claims.

c) The Buyer remains authorised to collect the claim in addition to us. We undertake not to collect the claim as long as the Buyer fulfils his payment obligations to us, there is no deficiency in his ability to pay and we do not assert the retention

of title by exercising a right in accordance with paragraph 3. If this is the case, however, we can demand that the Buyer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. In this case, we shall also be entitled to revoke the buyer's authorisation to resell and process the Goods subject to retention of title.

d) If the realisable value of the securities exceeds our claims by more than 10%, we shall release securities of our choice at the Buyer's request.

5. Unless otherwise agreed, tools shall not become the property of the purchaser, even in the case of full-cost invoicing; they shall remain our property unless expressly agreed otherwise.

## **Section 7 Buyer's claims for defects**

1. The statutory provisions shall apply to the Buyer's rights in the event of material defects and defects of title, including incorrect and short delivery or defective instructions, unless otherwise specified below. In all cases, the special statutory provisions on the reimbursement of expenses in the event of final delivery of the newly manufactured goods to a consumer (supplier recourse pursuant to Sections 478, 445a, 445b or Sections 445c, 327 paragraph 5, Section 327u of the German Civil Code (BGB)) shall remain unaffected, unless equivalent compensation is provided, e.g. within the framework of a quality assurance agreement.

2. The basis of our liability for defects is above all the agreement reached on the quality and intended use of the goods (including accessories and instructions). All product descriptions and manufacturer's specifications that are the subject of the individual contract shall be deemed to be an agreement on quality in this sense. Insofar as the quality has not been agreed, it shall be assessed in accordance with the statutory provisions whether a defect exists or not (Section 434 paragraph 3 of the German Civil Code (BGB)). We accept no liability for public statements made by the manufacturer or other third parties (e.g. advertising statements).

If the quality has not been agreed, the statutory provisions shall be used to assess whether or not a defect exists (Section 434 paragraph 3 of the German Civil Code (BGB)).

3. The warranty shall not apply if the Buyer modifies the

delivery item or has it modified by a third party without our consent and this makes it impossible or unreasonably difficult to remedy the defect. In any case, the Buyer shall bear the additional costs of remedying the defect resulting from the modification.

4. In the case of Goods with digital elements or other digital content, we shall only be obliged to provide and, if necessary, update the digital content insofar as this is expressly stated in a quality agreement in accordance with paragraph 2.

5. In principle, we are not liable for defects that the Buyer is aware of or is grossly negligent in not being aware of when the contract is concluded (Section 442 of the German Civil Code (BGB)). Furthermore, the Buyer's claims for defects presuppose that he has fulfilled his statutory inspection and notification obligations (Sections 377, 381 of the German Commercial Code (HGB)). In the case of building materials and other Goods intended for installation or other further processing, an inspection must always be carried out immediately prior to processing. If a defect is discovered during delivery, inspection or at any later time, we must be notified immediately in writing. In any case, obvious defects must be reported in writing within 7 working days of delivery and defects not recognisable during the inspection within the same period from discovery. If the Buyer fails to carry out the proper inspection and/or report defects, our liability for the defect not reported or not reported on time or not reported properly shall be excluded in accordance with the statutory provisions. In the case of Goods intended for assembly, mounting or installation, this shall also apply if the defect only became apparent after the corresponding processing as a result of a breach of one of these obligations; in this case, the Buyer shall in particular have no claims for reimbursement of corresponding costs („removal and installation costs“).

6. If the delivered item is defective, we can initially choose whether we will provide subsequent fulfilment by remedying the defect (rectification) or by delivering a defect-free item (replacement delivery). If the type of subsequent fulfilment chosen by us is unreasonable for the Buyer in the individual case, he may reject it. Our right to refuse subsequent fulfilment under the statutory conditions remains unaffected. At our request, an existing delivery item must be returned to us carriage paid. In the event of a justified notice of defects, we shall reimburse the costs of the favourable shipping route; however, this shall not apply if the costs increase due to the fact that the delivery item is located at a place other than the place of intended use.

In the case of defects from other manufacturers which we are unable to rectify for licensing or factual reasons, we are entitled, at our discretion, to assert our warranty claims against the manufacturer or supplier on behalf of the Buyer or to assign them to the Buyer. Warranty claims against us for such defects shall only exist under the other conditions and in accordance with these GTC if the legal enforcement of the aforementioned claims against the manufacturer or supplier was unsuccessful or is futile due to insolvency. For the duration of the legal dispute, the limitation period for the Buyer's warranty claims against us shall be suspended.

7. We are entitled to make the subsequent fulfilment owed dependent on the Buyer paying the purchase price due. However, the Buyer is entitled to retain a reasonable part of the purchase price in relation to the defect.

8. The Buyer shall give us the time and opportunity required for the subsequent fulfilment owed, particularly by handing over the rejected goods for inspection purposes. In the event of a replacement delivery, the Buyer shall return the defective item to us at our request in accordance with the statutory provisions; however, the Buyer shall not be entitled to return the item. Subsequent fulfilment shall not include the removal, dismantling or uninstallation of the defective item or the installation or attachment of a defect-free item if we were not originally obliged to perform these services; the Buyer's claims for reimbursement of corresponding costs („dismantling and installation costs“) shall remain unaffected.

9. We shall bear or reimburse the expenses necessary for inspection and subsequent performance, in particular transport, travel, labour, and material costs and, if applicable, dismantling and installation costs, in accordance with the statutory provisions and these GTC, if a defect actually exists. Otherwise, we may demand reimbursement from the Buyer for the costs incurred from the unjustified request to remedy the defect if the Buyer knew or could have recognised that there was in fact no defect.

10. In urgent cases, e.g. if operational safety is at risk or to prevent disproportionate damage, the Buyer shall have the right to remedy the defect himself and to demand compensation from us for the expenses objectively necessary for this purpose. We must be notified immediately, if possible, in advance, of any such self-remedy. The right of self-remedy does not apply if we would be entitled to refuse a corresponding subsequent fulfilment in accordance with the statutory provisions.

11. If a reasonable deadline set by the Buyer for subsequent fulfilment has expired without success or is dispensable in accordance with the statutory provisions, the Buyer may withdraw from the purchase contract or reduce the purchase price in accordance with the statutory provisions. In the case of an insignificant defect, however, there is no right of withdrawal.

12. Claims of the Buyer for reimbursement of expenses pursuant to Section 445a paragraph 1 of the German Civil Code (BGB) are excluded unless the last contract in the supply chain is a consumer goods purchase (Sections 478, 474 of the German Civil Code (BGB)). Claims of the Buyer for damages or reimbursement of futile expenses (Section 284 of the German Civil Code (BGB)) shall only exist in accordance with the following provisions in Sections 8 and 10, even if the goods are defective.

13. In the case of the sale of used movable items, rights due to defects and all claims for damages are excluded. The above provisions on the exclusion of claims for damages for used items do not apply to damages resulting from injury to life, limb, or health if we are responsible for the breach of duty and not for other damages resulting from an intentional or grossly negligent breach of duty on our part. Breaches of duty by our legal representatives or vicarious agents shall be deemed equivalent. Claims under the Product Liability Act and in the event of the assumption of a guarantee or a procurement risk shall remain unaffected.

## Section 8 Other liability

1. Unless otherwise stated in these GTC, including the following provisions, we shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the statutory provisions.

2. We shall be liable for damages - irrespective of the legal grounds - within the scope of fault-based liability in the event of wilful intent and gross negligence. In the event of simple negligence, we shall only be liable, subject to statutory limitations of liability (e.g. care in our own affairs; insignificant breach of duty), for

a) for damages resulting from injury to life, limb, or health,

b) for damages arising from the breach of an essential contractual obligation (obligation whose fulfilment is essential for

the proper execution of the contract and on whose compliance the contractual partner regularly relies and may rely); in this case, however, our liability is limited to compensation for the foreseeable, typically occurring damage.

3. The limitations of liability resulting from paragraph 2 shall also apply to third parties and in the event of breaches of duty by persons (including in their favour) whose fault we are responsible for in accordance with statutory provisions. The above exclusions and limitations of liability shall apply in particular to the same extent in favour of our executive bodies, legal representatives, employees, and other vicarious agents. They shall not apply if a defect has been fraudulently concealed or a guarantee for the quality of the goods has been assumed and for claims of the Buyer under the Product Liability Act.

4. The Buyer may only withdraw from or terminate the contract due to a breach of duty that does not consist of a defect if we are responsible for the breach of duty. A free right of cancellation of the Buyer (in particular in accordance with Sections 650, 648 of the German Civil Code (BGB)) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.

## Section 9 Property rights, copyrights

1. In accordance with this Section 9, we warrant that the delivery item is free from industrial property rights or copyrights of third parties. Each contracting party shall immediately notify the other contracting party in writing if claims are asserted against it due to the infringement of such rights.

2. In the event that the delivery item infringes an industrial property right or copyright of a third party, we shall, at our discretion and at our expense, modify or replace the delivery item in such a way that the rights of third parties are no longer infringed, but the delivery item continues to fulfil the contractually agreed functions, or procure the right of use for the Buyer by concluding a licensing agreement with the third party. If we do not succeed in doing so within a reasonable period of time, the Buyer is entitled to withdraw from the contract or to reasonably reduce the purchase price. Any claims for damages the Buyer are subject to the limitations of these GTC.

3. We reserve the right of ownership or copyright to all offers and cost estimates submitted by us as well as to such docu-

ments that we make available to our customer, such as drawings, illustrations, calculations, catalogues, models, tools and other documents and aids. The customer may not make such objects or documents accessible to third parties, disclose them, use them himself or through third parties or reproduce them without our express consent. At our request, our customer must return the items to us in full and destroy any copies made if they are no longer required by him in the ordinary course of business or if negotiations do not lead to the conclusion of a contract.

Excluded from this is the storage of electronically provided data for the purpose of regular data backup.

4. If we manufacture according to our client's instructions or provide services according to his specifications, our client shall be obliged to indemnify us from any claims asserted against us by third parties arising from infringements of industrial property rights/copyrights and the like.

## **Section 10 Limitation period**

1. Notwithstanding Section 438, paragraph 1, no. 3 of the German Civil Code (BGB) the general limitation period for claims arising from material defects and defects of title is one year from delivery. If acceptance has been agreed, the limitation period shall commence upon acceptance.

2. If the Goods are a building or an item that has been used for a building in accordance with its normal use and has caused its defectiveness, the limitation period shall be 5 years from delivery in accordance with the statutory regulation (Section 438, paragraph 1, no. 2 of the German Civil Code (BGB)). Other special statutory provisions on the limitation period (in particular Section 438, paragraph 1, no. 1, paragraph 3, Sections 444, 445b of the German Civil Code (BGB)) remain unaffected.

3. The above limitation periods of the law on sales shall also apply to contractual and non-contractual claims for damages of the Buyer based on a defect of the Goods, unless the application of the regular statutory limitation period (Sections 195, 199 of the German Civil Code (BGB)) would lead to a shorter limitation period in individual cases. The Buyer's claims for damages pursuant to Section 8, paragraph 2, sentence 1 and sentence 2 as well as pursuant to the Product Liability Act shall become time-barred exclusively in accordance with the statutory limitation periods.

## **Section 11 Reservation of fulfilment**

The fulfilment of the contract is subject to the proviso that no obstacles due to state sanctions or other delivery restrictions under foreign trade law come into effect and that no embargo or other sanctions prevent a delivery. The Buyer is obliged to provide information and documents that are required for the delivery or import.

## **Section 12 Choice of law, place of jurisdiction, contract language**

1. These GTC and the contractual relationship between us and the Buyer shall be governed by the law of the Federal Republic of Germany to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods (CISG).

2. The contract language is German.

3. If the Buyer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our registered office. The same applies if the Buyer is an entrepreneur within the meaning of Section 14 of the German Civil Code (BGB). However, in all cases we shall also be entitled to bring an action at the place of fulfilment of the delivery obligation in accordance with these GTC or an overriding individual agreement or at the Buyer's general place of jurisdiction. Overriding statutory provisions, in particular regarding exclusive jurisdiction, shall remain unaffected.