

**General Terms and Conditions of Sale of VIA electronic
GmbH
Current as of October 2017**

The following General Terms and Conditions of Sale of VIA electronic GmbH (hereinafter referred to as: **VIA**) apply to contracts with merchants, which are concluded in the course of their business, and to contracts with public entities, including special funds organized under public law.

1. Application of these Terms and Conditions

1.1. All of our goods and services as well as quotations (hereinafter referred to as "Deliveries") are governed exclusively by these General Terms and Conditions of Sale (hereinafter referred to as "Terms and Conditions"). These Terms and Conditions are deemed to be accepted, at the latest, upon the acceptance of the product or service. We hereby reject the contractual partner's terms and conditions of Business. This applies even if the contractual partner rejects our Terms and Conditions by referencing its own terms and conditions of business or purchasing conditions in a communication or in some other way.

1.2. These Terms and Conditions apply even if we make delivery unconditionally despite knowing that the contractual partner's Terms and Conditions vary from or conflict with these Terms and Conditions.

1.3. These Terms and Conditions replace all previous Terms and Conditions. They also apply to all future business relationships with the contractual partner.

2. Quotations and Conclusion of Contract

2.1. Our offers are non-binding and subject to change without notice unless the quotation provides otherwise. To be legally valid, declarations of acceptance and all orders must be confirmed by us in writing. The same applies to supplements, amendments or collateral agreements.

2.2. The content of the order confirmation will be regarded as contractually binding unless the customer rejects such content without delay.

2.3. Drawings, pictures, measurements and other specifications of our contractual partner are only binding if this is expressly agreed in writing.

3. Prices

3.1. Prices are calculated on the basis of the prices current at the time of the order confirmation plus value-added tax.

3.2. Unless agreed otherwise in writing, prices are EXW Hermsdorf, Federal Republic of Germany (ex works pursuant to the ICC Incoterms 2010) plus value-added tax at the statutory rate applicable from time to time.

4. Conditions of Payment, Right of Retention and Set-Off

4.1. Unless agreed otherwise in writing, payment must be made to VIA, in full, within 30 days of its invoice date.

4.2. After the expiry of 30 days, we are entitled to demand default interest at 9% above the base interest rate. The foregoing is without prejudice to any other claims for damages by us.

4.3. We may refuse to make Deliveries to the customer if it becomes apparent that our claim for payment is in jeopardy or if the customer is in default of payment. The foregoing also applies to non-reciprocal claims, i.e. where our payment claims are not closely linked temporally or thematically to the requested Deliveries.

4.4. VIA is a company belonging to the KOA Group. We are entitled to set off any claims which VIA or any of the companies in the KOA Group has against the customer against any claim that the customer has against the KOA Group. Upon request, VIA will send the customer a list of the companies belonging to the KOA Group.

4.5. The customer may only set off against VIA's claims those of its claims which are undisputed or non-appealable, or which are reciprocal with VIA's payment claim.

5. Delivery, Delivery Periods and Delay

5.1. The goods will be made available for pick-up in our sales packaging. If the customer requests that the goods be delivered in special packaging or specially marked, it will bear the related costs.

5.2. As long as this would be reasonable for the customer, we have the right to make delivery in installments.

5.3. The agreed delivery periods do not begin and time does not begin to run for the purposes of compliance with such agreed delivery periods until the customer has complied with its duties to cooperate, in particular provided, on a timely basis, all of the documents, permits, investigations and approvals that it is required to provide, and has complied with the agreed payment conditions. Where the parties have agreed on a specification, the documents to be provided by the customer also expressly include such specification. If these requirements are not properly satisfied in a timely manner, the delivery periods will be extended by a reasonable amount of time. This does not apply where VIA is responsible for the delay.

5.4. If VIA's failure to comply with an agreed delivery period is due to an event of force majeure, the delivery period will be extended by a reasonable amount of time, i.e. by the length of time that the impediment lasts plus an additional reasonable start-up period. Force majeure is any occurrence beyond VIA's control which prevents it from performing its obligations, in whole or in part. This includes, but is not limited to mobilization, war, terrorist attacks, riots, strikes, lockouts, earthquakes, interruptions to the power supply, fires, floods, interruptions to operations for which VIA is not responsible and orders made by a public authority. Supply problems and other defaults by VIA's subcontractors will also be considered force majeure events if the subcontractor's failure to perform its obligations is due to an event described in sentence 3. VIA will notify the customer as to the time when an event of force majeure begins and when it ends. It will use its best efforts to eliminate the event of force majeure and to mitigate its effect as much as possible. Under the rules governing frustration of contract (§ 313 of the German Civil Code (*Bürgerliches Gesetzbuch* – BGB)), either party may request an adjustment of contract where, in light of the circumstances in the individual case, it cannot be reasonably expected to adhere to the unamended contract. Notwithstanding the foregoing, either party may cancel the customer's orders which are affected by the event of force majeure if 12 weeks after the agreed delivery date the force majeure has still not ended.

5.5. Where delivery is late, the customer may only rescind the contract pursuant to the statutory provisions if VIA was responsible for the delay.

5.6. The limitations on liability set out in section 11 govern the customer's claims for damages for late delivery.

5.7. If the customer fails to take delivery of the goods or if it intentionally or negligently breaches other duties to cooperate, VIA will be entitled to demand compensation for additional expenses in the amount of 0.5% of the net price of the goods, but at most a total of 5% of the net price. Either party to the contract may present evidence to show that the additional expenses were higher or lower. We reserve the right to assert further claims for failure to take delivery.

6. Passing of Risk

Our Deliveries are made EXW Hermsdorf (Incoterms 2010) unless agreed otherwise in writing.

7. Incidental Obligations to Inspect and to Give Notice of Defects

7.1. In respect of our Deliveries, the provisions of § 377 of the German Commercial Code (*Handelsgesetzbuch* – HGB) always apply to the customer's duties to inspect and give notice of defects.

7.2. If the customer does not give timely notice of a defect, it will not be entitled to any warranty rights.

7.3. If a notice of defects is unjustified, we will be entitled to demand compensation from the customer for expenses which we incur as a result thereof unless the customer proves that the unjustified notice of defects was not due to negligence or intentional wrongdoing on its part.

8. Acceptance

The customer may not refuse to accept Deliveries because they have minor defects.

9. Warranties

9.1. Any warranty claims by the customer will become statute barred within 12 months from the delivery of the item. This does not apply in the case of claims arising in connection with loss of life, bodily injury or illness, or in cases of gross negligence or liability under the Product Liability Act (*Produkthaftungsgesetz*), or in cases where the law makes mandatory provision for a longer limitation period for rights of redress.

9.2. Where a defect is found during the warranty period and the cause of such defect already existed at the time that the risk passed, we will be entitled to remedy our performance by opting to either repair the defect or to deliver goods free from defects to replace the defective goods.

9.3. If we fail to remedy our performance, the customer will – irrespective of any claims for damages – be entitled to reduce the purchase price or rescind the contract in accordance with the statutory provisions.

9.4. Where VIA remedies its performance, it will not be responsible for dismantling costs in respect of defective goods which have already been installed or for installation costs to install replacement goods unless it was originally under an obligation to install the goods.

9.5. If the expenses which are necessary to remedy performance, such as the costs of transport, travel and materials are unreasonable, we will be entitled to reduce the reimbursable expenses to a reasonable amount. In calculating this amount, in particular the value of the goods free from defects and the significance of the defects must be taken into account.

9.6. The customer is not entitled to demand that we remedy our performance if the difference between the characteristics of the goods delivered and the agreed characteristics is only insignificant or if their usability is only slightly impaired. If the customer modifies the goods in an improper manner, it will also be excluded from bringing any warranty claims.

9.7. The customer will only have rights of redress against VIA to the extent that the warranty rights it has granted its own purchasers, e.g. goodwill settlements do not exceed the statutory warranty rights.

9.8. In all other respects, VIA's duty to pay damages to the customer and its duty to compensate the customer for wasted expenses as a result of the goods' defects in quality will be based on section 11 (Liability). The customer may not bring any claims for defects in quality that exceed or are different to the claims provided for in this section 9.

9.9. This section 9 applies *mutatis mutandis* to defects in title which do not result from the infringement of third-party intellectual property rights.

10. Intellectual Property Rights and Copyrights

10.1. We will only be liable for infringements of third-party rights (intellectual property rights, patents, copyrights, trademarks, etc.) if the intellectual property right exists under the law of the country in which the customer has its invoice address.

10.2. No liability pursuant to subsection 1 exists where the Deliveries were produced in accordance with the drawings, drafts, models or other comparable descriptions or information supplied by the customer or where the customer is for any other reason responsible for the infringement of intellectual property rights. In this case, the customer must indemnify, defend and hold us harmless against any third-party claims arising from an alleged or actual infringement of intellectual property rights.

10.3. The customer must, without delay, notify us in writing in respect of any claims alleged or asserted by a third party and, upon our request allow us - insofar as possible - to handle the legal dispute (including in the case of disputes out of court).

10.4. The customer has no authority to acknowledge an infringement without our consent and must make any acknowledgement of an infringement subject to our right to undertake measures to defend and settle infringement claims. If the customer ceases to use the delivered goods, it will notify the third party that this does not constitute acknowledgement on its part of an infringement of intellectual property rights.

10.5. We are entitled to elect to obtain a license to use the goods delivered or to modify the goods such that they do not infringe third-party intellectual property rights or to exchange the goods for other goods. If it is not possible for us to do so on reasonable terms or within a reasonable period of time, the customer will be entitled to exercise its statutory right of rescission or its statutory right to reduce the purchase price.

10.6. In all other respects, our duty to pay damages will be as provided in section 11.

10.7. Section 9.1 applies *mutatis mutandis* to the limitation period for claims for infringements of intellectual property rights.

10.8. The customer may not bring any claims for infringement of third-party intellectual property rights that exceed or are different to the claims provided for in this section 10.

10.9. We unconditionally reserve title to all of our quotations, construction drawings, specifications and other documents, and unconditionally reserve the right to exploit them under copyright law.

11. Limitation of Liability

11.1. VIA will be liable for any intentional or grossly negligent breach of duty on the part of its employees, representatives and/or vicarious agents in accordance with the statutory provisions.

11.2. In the event of a breach of an essential contractual duty due to slight negligence on our part, our liability will be limited to the foreseeable damage that is typical for a breach of a contract of this kind. Essential contractual obligations are those obligations for which the contract was entered into and upon whose fulfillment the customer is entitled to rely.

11.3. Where delivery is late due to slight negligence, the customer's claim for damages for loss from the delay will be limited to a maximum of 10% of the purchase price in respect of that part of the delivery which could not be put to the intended use due to the delay.

11.4. Any further liability on the part of VIA for damages is excluded.

11.5. This limitation of liability does not apply to liability for intentional wrongdoing or negligence in connection with loss of life, bodily injury or illness, or where VIA has given a guarantee. These remain – as does mandatory liability under the Product Liability Act – unaffected.

12. Retention of Title

12.1. The goods delivered (hereinafter referred to as "Goods to which VIA retains title") will remain the property of VIA until all of VIA's claims against the customer that arise from their business relationship have been satisfied. Where the value of all the security interests to which VIA is entitled exceeds the value of all the secured claims by more than 20%, VIA will, upon request from the customer, release a corresponding part of its security.

12.2. The customer will, with the care of a prudent merchant, store the Goods to which VIA retains title. It is obliged, at its own expense, to take out adequate replacement value insurance to cover damage from fire, water or theft.

12.3. In the event that the delivered Goods to which VIA retains title are worked and/or processed, this will be for the benefit of VIA. Where contingent rights in the old goods have validly accrued to the customer, these rights will continue to exist in the worked and/or processed goods. To cover the eventuality that the Goods to which VIA retains title are combined and/or mixed with other goods which are not the property of VIA, the parties hereby agree that VIA will have co-ownership rights in the new and/or mixed product (hereinafter referred to as the "New Product") in an amount proportional to the ratio of the value of the combined and/or mixed Goods to which VIA retains title to the value of the other combined and/or mixed goods at the time they were combined and/or mixed. The customer will, with the care of a prudent merchant, store the New Product on VIA's behalf and will do so free of charge.

12.4. The customer is not permitted to pledge or assign the goods as security while they remain subject to VIA's retention of title. It may, however, resell them in the ordinary course of business if it also imposes a retention of title clause on its own purchaser. The customer will only be entitled to do this if it is not in default of payment in relation to VIA.

12.5. To cover the eventuality that it sells the Goods to which VIA retains title, the customer herewith assigns to VIA, as security, any claims that it may have against its purchaser from a resale of the Goods to which VIA retains title as well as any claims that it may have for any other reason against its purchaser or a third party in respect of the Goods to which VIA retains title (e.g. claims based on tort or claims to insurance payments) – including any claim for the outstanding balance in a running account. The assignment will, however, be limited to the price invoiced by VIA for the Goods to which VIA retains title.

Satisfaction of the portion of the claim that is assigned to VIA will be given priority.

12.6. The customer may collect the claims assigned to VIA from the resale until VIA revokes this authorization. The customer will require the written consent of VIA to assign or pledge such claims. Except where VIA has no legitimate interest in the notification of third parties of the assignment, the customer will be obliged to notify third parties thereof when requested to do so by VIA. Furthermore, the customer will be obliged to supply VIA with the information and documents necessary to collect the claims. Any costs arising in connection with the collection of the claims will be borne by the customer. With regard to the Goods to which VIA retains title or the New Product, the customer will at its own expense take all measures necessary to prevent possible impairment of or loss to VIA's rights.

12.7. In the event that a third party attaches, seizes or encumbers, or otherwise disposes of the Goods to which VIA retains title, the customer will inform VIA in writing without delay and will assist it in resisting such measures.

12.8. Where VIA requests it to do so and where VIA has a legitimate interest in this, the customer will grant VIA or a party engaged by it access to the Goods to which VIA retains title that are in its possession and will supply a detailed list of them and, in the event of VIA's withdrawal from the contract, will hand them over to VIA.

12.9. The parties agree that as between themselves the customer will bear any costs and expenses that arise as a result of its duty to assist VIA in pursuing and enforcing its rights from its retention of title.

13. Export Provisions

13.1. Deliveries by us are subject to the proviso that they can be carried out without any obstacles presented by national or international export control regulations, in particular embargoes or other sanctions.

13.2. The customer must provide all the information and documents that are necessary for export or shipment.

13.3. Deadlines and delivery periods will cease to apply if delays occur due to export inspections or permit procedures.

13.4. VIA may terminate this contract without notice if it is necessary for it to do so in order to comply with national or international legal provisions.

13.5. If a contract is terminated pursuant to section 13.4, this will not constitute grounds for the customer to claim damages or assert any other rights.

13.6. If the customer passes on the goods that VIA delivers to a third party in Germany or abroad, it must comply with the applicable international and national export and re-export control regulations.

14. General Provisions

14.1. All disputes arising directly or indirectly from the contractual relationship are, if the customer is a merchant, subject to the exclusive jurisdiction of the courts of Jena. VIA will nonetheless be entitled to sue the customer at the place where the customer has its registered office.

14.2. The legal relationships connected with this contract will be governed by German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

14.3. In the event that any provision in these Terms and Conditions is or becomes invalid, this will not affect the validity of the remaining provisions or agreements.

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