

**General Terms and Conditions of Sale of VIA electronic GmbH**  
**Status September 2023**

The following terms and conditions (hereinafter also referred to as "GTC") shall apply to contractual relationships of VIA electronic GmbH (hereinafter referred to as "**VIA**") with merchants within the scope of their business relationships and with legal entities under public law including special funds under public law.

**1. Scope**

- 1.1. These GTC apply to contracts for the sale of our products, works performances, services and deliveries to be made (hereinafter also referred to collectively as "**Products**"). Our offers and deliveries are made exclusively on the basis of these GTC. Deviating, conflicting or supplementary terms and conditions shall only become part of the contract if and to the extent that we have expressly consented to their application. This requirement of consent shall also apply if the customer refers to his terms and conditions within the scope of his order and we do not expressly object thereto.
- 1.2. Unless otherwise agreed, these GTC shall apply in the version valid at the time of the customer's order or, in any case, in the version last notified to the customer as a framework agreement also for similar future contracts without us having to refer to these GTC again in each individual case.
- 1.3. Individual agreements made with the customer in individual cases shall in any case take precedence over these GTC. Subject to proof to the contrary, a written contract or our written confirmation shall be decisive for the content of such agreements.
- 1.4. Legally relevant declarations and notifications by the customer must be made in writing or text form.

**2. Offers and conclusion of contract**

- 2.1. Our offers are subject to change and non-binding.
- 2.2. The order by the customer shall be deemed a binding offer of contract. We are entitled to accept this offer within 14 (fourteen) days after its receipt by VIA.
- 2.3. Acceptance may be declared in text form (hereinafter "**Order Confirmation**") or by delivery of the products to the customer. The content of our Order Confirmation shall be deemed to determine the content of the contract.

**3. Prices**

- 3.1. Prices are calculated on the basis of the prices valid at the time of the Order Confirmation.
- 3.2. Prices are EXW Hermsdorf, Federal Republic of Germany (EXW according to ICC Incoterms 2020) plus statutory VAT.
- 3.3. At the customer's request and expense, we shall ship the products to another destination (hereinafter "**Sales Shipment**" (*Versendungskauf*)). In the case of a Sales Shipment, VIA is entitled to determine the type of shipment (in particular the transport company, the shipping route and the packaging).

**4. Terms of payment, right of retention and set-off**

- 4.1. The purchase price is due and payable within 14 (fourteen) days from the date of invoice and delivery without deduction. We are entitled, also within the scope of an ongoing business relationship, at any time to carry out a delivery in whole or in part only against advance payment. We declare a corresponding reservation at the latest with the order confirmation.
- 4.2. Upon expiry of the aforementioned payment deadline, the customer shall be in default. 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 assert further damage caused by default. With respect to merchants, our claim to the commercial due date interest rate (Section 353 German Commercial Code (*HGB*)) shall remain unaffected.
- 4.3. We may refuse deliveries to the customer if it becomes apparent that our claim for payment is at risk or the customer is in default of payment. The latter shall also apply to non-connected claims, i.e. if our payment claims are not closely related in terms of time or substance.
- 4.4. VIA is a company of the KOA Group. We shall be entitled to set off all claims to which we or the companies of the KOA Group are entitled against the customer against all claims which the customer has against the KOA Group. Upon request, VIA will provide the customer with a list of the companies belonging to the KOA Group.
- 4.5. The customer may only set off claims of VIA against claims that are undisputed or have been finally determined by a court.

**5. Delivery, delivery times, delay**

- 5.1. The Products are delivered in our sales packaging. If the customer requests that the Products shall be provided in special packaging or with special labeling, the customer shall bear resulting costs.
- 5.2. Partial deliveries are allowed insofar as they are reasonable for the customer.
- 5.3. The commencement of and compliance with agreed delivery periods shall be subject to the fulfillment of the obligations to cooperate, in particular the timely receipt of all documents, approvals, examinations and releases to be provided by the customer and compliance with the agreed terms of payment. The documents to be provided shall expressly include a specification agreed by both parties. If these prerequisites are not duly fulfilled in good time, the delivery periods shall be extended accordingly.
- 5.4. If non-compliance with an agreed delivery period is due to force majeure, the delivery period shall be reasonably extended, i.e. by the duration of the delay plus a reasonable start-up period. Force majeure is any event beyond the control of VIA which prevents VIA from delivering in whole or in part. This includes in particular mobilization, war, terrorist attacks, riots, strikes, lockouts, epidemics and pandemics, earthquakes, disruption of the energy supply, fire damage, floods, operational disruptions for which VIA is not responsible. Supply difficulties and other performance disruptions on the part of VIA's suppliers shall also be deemed to be force majeure if the supplier, for its part, is prevented from performing the service by an event pursuant to this clause. VIA shall notify the customer of the occurrence as well as the end of the force majeure and shall endeavor to remedy the force majeure and to limit its effects as far as possible. Each contracting party shall be entitled to withdraw from the purchase contracts affected thereby if the force majeure lasts for more than 12 (twelve) weeks from the agreed delivery date.
- 5.5. If we are unable to meet binding delivery deadlines for reasons for which we are not responsible (hereinafter referred to as "**Non-availability of performance**"), we shall inform the customer without delay and notify him of the expected new delivery deadline. If the products are also not available within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; we shall immediately refund any remuneration already paid by the customer. A case of Non-availability of performance in this sense shall be deemed to be in particular the non-timely self-delivery by our supplier if we have concluded a congruent transaction or if neither we nor our supplier are at fault.
- 5.6. The occurrence of default in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder by the customer is required.

- 5.7. If we are in default of delivery, the customer may claim compensation for the damage caused by the delay. The customer's claim for compensation for damage caused by delay is limited in total to a maximum of 10% of the net price of the Products in delay.
- 5.8. The rights of the customer pursuant to Clause 12 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 performance), shall remain unaffected.

## **6. Production of functional samples and prototypes**

- 6.1. If the customer commissions VIA to manufacture functional samples or prototypes (hereinafter "**Functional Samples**"), VIA shall use the preliminary specification agreed between the parties as a basis. The production of Functional Samples takes place at a development stage, so that deviations are possible. The parties will jointly adjust the specification if necessary. A result under the contract for work and services (*werkvertraglicher Erfolg*) is generally not owed, but VIA will endeavor to manufacture the Functional Samples in accordance with the preliminary specification.
- 6.2. The customer shall be obliged to provide reasonable cooperation.
- 6.3. The customer shall remunerate VIA for the services rendered in connection with the Functional Samples. This shall also apply if the Functional Samples do not comply with the intended parameters.

## **7. Default of acceptance by the customer**

- 7.1. If the customer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the customer is responsible, VIA shall be entitled to claim compensation for the resulting damage including additional expenses. For this purpose, we shall charge a lump-sum compensation in the amount of 0.5% of the delivery value, but not more than a total of 5% of the delivery value.
- 7.2. Proof of higher damages and our statutory claims (in particular compensation for additional expenses, reasonable compensation, termination) shall remain unaffected; the lump sum shall be credited against further claims. The customer shall be entitled to prove that we have incurred no damage at all or only significantly less damage than the aforementioned lump sum.

## **8. Delivery and transfer of risk**

- 8.1. Our deliveries are made EXW from our warehouse in Hermsdorf (ICC Incoterms 2020), which is also the place of performance for the delivery and for any subsequent performance.
- 8.2. The risk of accidental loss or accidental deterioration (hereinafter referred to as "**Transfer of Risk**") of the Products shall pass to the customer at the latest upon handover. In the case of sale by delivery to a place other than the place of performance, the transfer of risk as well as the transfer of the risk of delay shall take place upon handover of the Products to the forwarding agent, the carrier or the person otherwise designated to carry out the shipment.
- 8.3. The same shall apply if the customer is in default of acceptance.

## **9. Incoming good inspection**

- 9.1. With regard to the customer's inspection and complaint obligations, the provisions of Section 377 HGB shall always apply to our deliveries. An inspection of the Products must be carried out in any case before processing.
- 9.2. If the customer fails to properly inspect the Products and/or notify us of defects, our liability for the defect not reported or not reported in time or not reported properly shall be excluded in accordance with the statutory provisions.
- 9.3. If a notice of defect is unjustified, we shall be entitled to demand compensation from the customer for the expenses incurred by us.

## **10. Warranty for defects**

- 10.1. The statutory provisions shall apply to the customer's rights in the event of defects or defects of title, unless otherwise set forth in this GTC.
- 10.2. The basis of any liability for defects shall be the agreement reached on the quality of the Products, in particular the product specification issued by VIA.
- 10.3. VIA shall not be liable for defects of which the customer is aware at the time of conclusion of the contract or is not aware due to gross negligence (Section 442 German Civil Code (*BGB*)).
- 10.4. If the delivered Products are defective, we may, at our discretion, remedy the defect or provide a defect-free Product (replacement delivery) as subsequent performance. Our right to refuse subsequent performance under the statutory conditions shall remain unaffected.
- 10.5. If the supplementary performance fails or if a reasonable period of time to be set by the customer for the supplementary performance has expired unsuccessfully or is dispensable according to the statutory provisions, the customer shall have the right - without prejudice to any claims for damages - to reduce the purchase price or to withdraw from the contract in accordance with the statutory provisions. In the event of an insignificant defect, however, there shall be no right of withdrawal.
- 10.6. Within the scope of supplementary performance, VIA shall bear neither the removal costs of defective Products already installed nor the installation costs of the Products delivered for supplementary performance if VIA was not originally obliged to process them.
- 10.7. If the expenses required for the purpose of subsequent performance are disproportionate, we may limit the reimbursement of expenses to a reasonable amount. When assessing this amount, the value of the products in a defect-free condition and the significance of the defect shall be taken into account.
- 10.8. We are entitled to make the subsequent performance owed dependent on the customer paying the purchase price due. The customer shall be entitled to retain a reasonable part of the purchase price in relation to the defect.
- 10.9. VIA's obligation to pay damages and reimbursement of futile expenses due to material defects shall otherwise be governed by Clause 12 (Limitation of Liability). Further claims of the customer due to defects are excluded.

## **11. Industrial property rights and copyrights**

- 11.1. We shall only be liable for third party rights (industrial property rights, patents, copyrights, trademarks, etc.) if the property right exists under the law of the country in which the customer has its billing address.
- 11.2. We shall not be liable if Products are manufactured according to drawings, drafts, models or other equivalent descriptions or information provided by the customer or insofar as the customer is responsible for the infringement of property rights for other reasons. In this case, the customer shall indemnify us against all claims of third parties arising from an alleged or actual infringement.
- 11.3. The customer is obligated to inform us immediately in writing of any claims asserted or claimed by a third party and to leave the conduct of legal disputes (also out of court) to us at our request - to the extent legally possible.

- 11.4. Without our consent, the customer shall not be entitled to acknowledge an infringement and shall reserve all defensive measures and settlement negotiations to us. If the customer ceases to use the Products, he shall be obliged to point out to the third party that the cessation of use does not constitute an acknowledgement of an infringement of property rights.
- 11.5. At our discretion, we shall be entitled either to obtain a right of use for the delivered Products or to modify the Products in such a way that the third party's right is no longer infringed or to exchange the Products. If this is not possible for us under reasonable conditions or within a reasonable period of time, the customer shall be entitled to the statutory rights of withdrawal or price reduction.
- 11.6. In all other respects, the provisions of Clause 10 shall apply accordingly.
- 11.7. Our obligation to pay damages shall otherwise be governed by Clause 12.
- 11.8. We reserve our ownership of all cost estimates, design drawings, specifications and other documents and our copyright exploitation rights without restriction.

## 12. Limitation of liability

- 12.1. Unless otherwise provided in these GTC, VIA shall be liable for a breach of contractual and non-contractual obligations in accordance with the statutory provisions.
- 12.2. VIA shall be liable for damages - irrespective of the legal grounds - within the scope of fault liability in the event of intent and gross negligence.
- 12.3. In the event of simple negligence, VIA shall only be liable for
  - (i) for damages resulting from injury to life, body or health,
  - (ii) for damage resulting from the breach of an essential contractual obligation (an essential contractual obligation is an obligation the fulfillment of which makes the proper performance of the contract possible in the first place and the observance of which the contracting party regularly relies on and may rely on); in this case, however, VIA's liability shall be limited to compensation for the foreseeable, typically occurring damage.
- 12.4. The above limitations of liability shall also apply to breaches of duty by or in favor of persons for whose fault VIA is responsible in accordance with the statutory provisions. They shall not apply insofar as VIA has fraudulently concealed a defect or has assumed a guarantee for the quality of the Products and for claims under the German Product Liability Act (*Produkthaftungsgesetz*).
- 12.5. Due to a breach of duty that does not consist of a defect, the customer may only rescind or terminate the contract if VIA is responsible for the breach of duty. In other respects, the statutory requirements and legal consequences shall apply.

## 13. Statute of limitation (*Verjährung*)

- 13.1. The limitation period for claims arising from defects is one year from delivery.
- 13.2. The above limitation periods of the law on sales also apply to contractual and non-contractual claims for damages of the customer based on a defect of the Products, unless the application of the regular statutory limitation period (Section 195, 199 BGB) would lead to a shorter limitation period in individual cases.
- 13.3. Claims for damages by the customer for damages within the scope of fault liability in the event of intent and injury to life, limb or health as well as under the Product Liability Act shall become time-barred exclusively in accordance with the statutory limitation periods.

## 14. Retention of title

- 14.1. The delivered products shall remain the property of VIA until all claims to which VIA is entitled against the customer arising from the business relationship have been satisfied (hereinafter: "**Goods under retention of title**"). If the value of all security rights to which VIA is entitled exceeds the amount of all secured claims by more than 10%, VIA shall release a corresponding part of the security rights at the customer's request.
- 14.2. The customer must store the Goods under retention of title with the care of a prudent businessman. The customer must insure them adequately at his own expense against fire, water and theft at replacement value.
- 14.3. Treatment and/or processing of the Goods under retention of title shall be carried out for VIA. Any right of the customer which has effectively arisen shall continue to exist in the processed or treated good. In the event of combination and/or mixing with other goods not belonging to VIA, VIA and the customer agree already now that VIA shall acquire co-ownership of the new goods and the mixed stock (hereinafter: new goods) in the amount of the share resulting from the ratio of the value of the combined or mixed goods subject to retention of title to the value of the other combined or mixed goods at the time of combination or mixing. The customer shall store the new goods for VIA free of charge and with the care of a prudent businessman.
- 14.4. During the existence of the retention of title, the customer is prohibited from pledging or assigning the goods as security. However, the customer may resell them in the ordinary course of business if the customer also agrees on a retention of title with his customer. However, this right shall only apply as long as the customer is not in default of payment towards VIA.
- 14.5. If the customer sells the Goods under retention of title, the customer hereby assigns to VIA by way of security its claims against its customer arising from the resale as well as those claims of the customer relating to the Goods under retention of title which arise against its customers or third parties for any other legal reason (e.g. claims arising from tort and claims for insurance benefits) - including any balance or current account claims. However, the assignment shall only apply to the amount corresponding to the price of the Goods under retention of title invoiced by VIA. The share of the claim assigned to VIA shall be satisfied with priority.
- 14.6. Until revoked, the customer is authorized to collect the assigned claims from the resale. The assignment or pledging of such claims shall require the written consent of VIA. At VIA's request, the customer shall be obliged to inform the third party of the assignment, unless VIA has no legitimate interest in doing so, and to provide VIA with the information and hand over the documents required for asserting the claims. Any costs of collection incurred in this connection shall be borne by the customer. The customer shall take all necessary measures at his own expense to prevent any impairment or loss of the rights to which VIA is entitled to the Goods under retention of title or new goods.
- 14.7. In the event of seizures, confiscations or other dispositions or interventions by third parties over or in the Goods under retention of title, the customer shall notify VIA immediately in writing and support VIA in averting such measures.
- 14.8. Upon request and in case of justified interest of VIA, the customer shall be obliged to grant VIA or a third party commissioned by VIA access to the Goods under retention of title in the customer's possession, to send an exact list of the Goods under retention of title, and/or - in case of withdrawal of VIA - to return the Goods under retention of title to VIA.
- 14.9. The customer shall bear the costs and expenses incurred as a result of the customer's duty to cooperate in the pursuit and enforcement of the rights to which VIA is entitled from the Goods under retention of title.

## 15. Export regulations

- 15.1. Our deliveries are subject to the proviso that there are no obstacles to performance due to national or international export control regulations, in particular embargoes or other sanctions.
- 15.2. The customer is obliged to provide all information and documents required for export or shipment.
- 15.3. Delays due to export inspections or approval procedures suspend deadlines and delivery times.

- 15.4. VIA is entitled to terminate the contract without notice if the termination is necessary for VIA to comply with national or international legal provisions.
- 15.5. In the event of a termination pursuant to Clause 15.4 the assertion of a claim for damages or the assertion of other rights by the customer due to the termination shall be excluded.
- 15.6. When passing on the Products delivered by VIA to third parties at home and abroad, the customer shall comply with the respective applicable provisions of international and national (re-) export control law.

**16. General provisions**

- 16.1. If the customer is a merchant, the sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be Jena. However, VIA shall also be entitled to bring an action at the place of performance of the delivery obligation pursuant to these GTC or a prior individual agreement or at the customer's general place of jurisdiction. Mandatory statutory provisions, in particular regarding exclusive jurisdiction, shall remain unaffected.
- 16.2. The legal relations in connection with this contract shall be governed by German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 16.3. Should any provision of these terms and conditions or of the further agreements made be or become invalid, this shall not affect the validity of all other terms and conditions or agreements.

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