

General Business, Payment and Delivery Conditions



Section 1 General – Scope

- (1) These conditions apply to all sales, deliveries and other performances of the companies of the Vossloh-Schwabe Group in transactions with other companies.
- (2) Our conditions of sale apply exclusively. We shall not recognize any contradictory conditions or conditions of the customer that differ from our conditions of sale unless we had explicitly approved their applicability in writing. Our conditions of sale also apply if we make delivery to the customer without reservation in awareness of contradictory conditions.
- (3) All agreements made between us and the customer for the purposes of executing this Agreement are set down in writing in this Agreement.
- (4) Our conditions of sale only apply towards companies in accordance with section 310 paragraph 1 BGB.

Section 2 Tender – Tender documents

- (1) If the order has to be qualified as a tender in accordance with section 145 BGB we can accept this within two weeks.
- (2) If we accept an order/assignment after the expiry of this deadline this shall be our tender to the customer that shall be deemed to be accepted if the customer does not object to it immediately on its receipt at the customer. Any postponement of acceptance of ordered merchandise is only possible for a maximum of six months from the time of ordering.
- (3) We reserve rights of ownership and copyright to illustrations, drawings, costings and other documents. This also applies to other written documents that are labelled as "confidential". The customer requires our explicit written consent before forwarding such documents to third parties. Deviations in standards within the scope of usual trade tolerances and relevant DIN regulations are permissible. We reserve the right to carry out technical amendments including to the production process insofar as these do not have detrimental effects and are not unreasonable for the customer.

Section 3 Prices – Payment conditions – Assignment authorization

- (1) If nothing to the contrary arises from the order confirmation our prices apply "ex works" (EXW) excluding packaging. Packaging shall be invoiced separately. If after the conclusion of an agreement customs duties, freight or insurance costs rise or are newly introduced we shall be entitled to add these costs including in the event freight free of customs cleared delivery has been agreed. We may take any increase in material or raw material costs into account if at least 2 months have passed since the conclusion of the agreement until delivery.
- (2) Statutory value added tax is not included in our prices. It will be shown separately at the statutory amount on the day of invoicing.
- (3) Any discounts require a special written agreement.
- (4) If nothing to the contrary arises from the order confirmation the purchase price is due for payment net (without deductions) within 30 days of the invoice date. Legal regulations relating to payment arrears apply.
- (5) The customer shall only be entitled to offsetting rights if their counterclaims have been established in law, are undisputed or have been recognized by us. In addition the customer shall only be authorized to exercise a right of retention insofar as its counterclaim relates to the same contractual relationship.
- (6) We reserve the right to assign our claims against the customer to third parties. Should the customer be in default of payment of a claim, all other claims against the customer arising from the business relationship may be called in. The customer shall bear all reasonable fees, costs and necessary expenses incurred in connection with any successful legal action against said customer outside of Germany.

Section 4 Delivery time

- (1) The condition for the start of the delivery time given by us is the clarification of all technical questions. We are entitled to make partial deliveries.
- (2) Further the condition for compliance with our obligation to deliver is the timely and orderly fulfilment of the obligation of the customer. We reserve the right to objection to a non-fulfilled agreement.
- (3) If the customer falls into acceptance arrears or if the customer culpably breaches any other cooperation duties we shall be entitled to demand compensation of any losses incurred by us in this respect including any additional expenses. We reserve the right to any further claims or rights.
- (4) If the conditions detailed in paragraph 3 exist the risk of accidental loss or accidental deterioration of the object of sale shall pass to the customer at the point in time at which the customer falls into acceptance arrears or debtor's delay.
- (5) We shall be liable in accordance with statutory provisions insofar as the fundamental purchase agreement is business to be settled on a fixed date in accordance with section 286 paragraph 2 no. 4 BGB or section 376 HGB. We shall also be liable in accordance with statutory provisions if as a result of a delay in delivery for which we are responsible the customer is entitled to enforce that its interests in further contractual fulfilment have discontinued.
- (6) Further we shall be liable in accordance with statutory provisions if the delay in delivery relates to a deliberate or grossly negligent breach of contract for which we are responsible. Any fault of our representatives or vicarious agents shall be attributable to us. If the delay in delivery relates to a grossly negligent breach of contract for which we are responsible our liability to provide compensation shall be limited to the foreseeable typically occurring losses.
- (7) We shall also be liable in accordance with statutory provisions insofar as the delivery delay for which we are responsible relates to a culpable breach of a cardinal contractual duty. In this case however the liability to pay compensation shall be limited to the foreseeable typically occurring losses.
- (8) In other respects in the event of a delay in delivery we shall be liable for each completed week for general delay compensation of 3% of the value of delivery however up to a maximum of 15% of the value of the delivery.
- (9) Further statutory claims and rights of the customer remain reserved.

Section 5 Delivery to ourselves, force majeure and other obstructions

- (1) If we do not receive, do not receive correctly or do not receive punctually deliveries or performances from our upstream suppliers for reasons for which we are not responsible or if incidents of force majeure occur we shall be entitled to postpone the performance for the duration of the obstruction or to withdraw from the non-fulfilled part of the agreement in full or in part. Force majeure shall be equated with strikes, lockouts, official interventions, shortages of energy or raw materials, transport bottlenecks, non-culpable business obstructions and all other obstructions that when considered objectively are not culpably caused by us. The preceding circumstances shall also apply if circumstances described therein occur after we have fallen into delay.
- (2) If a binding delivery date or deadline is exceeded due to incidents in accordance with figure 5.1 the customer can demand that we declare whether we wish to withdraw or perform within an appropriate period of grace. If such a declaration is not made the customer can withdraw from the non-fulfilled part of the agreement.

Section 6 Transfer of risks – Packaging costs

- (1) If nothing to the contrary arises from the order confirmation delivery "ex works" is agreed.
- (2) Separate agreements apply to the return of packaging.
- (3) If the customer wishes we shall cover the delivery with transport insurance. The customer shall bear any such costs incurred.
- (4) The risk of accidental loss, destruction or deterioration shall pass to the customer on surrender.

Section 7 Payment conditions

- (1) Performances are due for payment on the due date shown on the invoice at the latest and in the absence of which within 30 days net. The day of payment shall be deemed to be the date we receive the money or the credit is shown on our account.
- (2) We shall only accept bills on the basis of a special agreement.
- (3) If payment conditions are not complied with or circumstances become known that in our conscientious commercial discretion cause justified doubts of the creditworthiness of the customer and also including such facts that existed on the conclusion of the agreement but that were not known to us or should have been known to us we are entitled regardless of any further legal rights to demand payment in advance for still outstanding deliveries or the provision of suitable securities and after fruitless expiry of an appropriate deadline for the provision of such securities to withdraw from the agreement or to demand compensation. In addition we are entitled to prohibit the further disposal or processing of the goods in our ownership or co-ownership and to demand the return of such goods to us or the grant of co-ownership at the cost of the customer.
- (4) The customer shall only have rights of retention or offsetting with respect to such counterclaims that are undisputed or that are established in law.

Section 8 Liability for defects

- (1) The condition for defect claims of the customer is that the customer meets its obligations to inspect and to object

owed in section 377 HGB. In contrast any warranty claims shall be regulated by our special warranty conditions.

- (2) Should any deficiency exist in the subject matter of the purchase and sale, the customer - at the discretion of Vossloh-Schwabe Deutschland GmbH, is entitled to subsequent performance in the form of a rectification of the deficiency or for the supply of a new defect-free item of the subject matter. In case of any removal of a deficiency or replacement supply, Vossloh-Schwabe Deutschland GmbH is under a contractual duty hereby to bear all the necessary expenditure for the purposes of fulfilling the subsequent performance, e.g. the transportation- and way-charges, and the labour- and materials'-costs. Vossloh-Schwabe Deutschland GmbH is however entitled to protest the form of the subsequent performance when this is only possible by means of unreasonable expenditure, notwithstanding the statutory requirements of Art. 275, para- 2 and 3 of the German Federal 'BGB-Bürgerliches Gesetzbuch' (Civil Law Code).
- (3) If supplementary performance fails the customer shall be entitled to withdrawal or to a reduction in accordance with their choice.
- (4) We are liable in accordance with statutory provisions if the customer enforces claims to compensation that relate to intent or gross negligence including the intent or gross negligence of our representatives or vicarious agents. Insofar as no deliberate breach of contract is alleged liability to pay compensation shall be limited to the foreseeable typically occurring loss.
- (5) We are liable in accordance with statutory provisions if we culpably breach a cardinal contractual obligation. In this case the liability to pay compensation shall also be limited to the foreseeable typically occurring loss.
- (6) Insofar as the customer in any other respects is entitled to a claim for compensation of loss instead of performance our liability shall be limited to the foreseeable typically occurring loss.
- (7) Liability due to culpable loss of life, personal injury or damage to health remains unaffected. This also applies to any mandatory liability under the German Product Liability Act.
- (8) Insofar as nothing to the contrary is regulated above liability is excluded.
- (9) The period of limitations for defect claims is 12 months calculated from the transfer of risks. This shall not apply insofar as the object of sale is usually used for a building and caused the defect.

Section 9 Joint liability

- (1) Any liability to pay compensation beyond that provided in section 6 is excluded regardless of the legal nature of the claim enforced. This applies in particular to claims to compensation from fault on conclusion of the agreement, due to other breaches of obligations or due to liability in tort claims for compensation for loss of property in accordance with section 823 BGB.
- (2) The limitation in accordance with paragraph 1 also applies insofar as the customer instead of a claim to compensation for the loss instead of performance demands compensation for fruitless expenses.
- (3) Insofar as any liability of ours to pay compensation is excluded or limited this also applies with reference to the personal liability to pay compensation of our office employees, trade employees, other staff, representatives or vicarious agents.

Section 10 Copyright protection, software rights of use

- (1) Documents, drawings and design performances provided by us that are committed to the customer may only be used by the customer for the planned purpose and must neither be made accessible to third parties by the customer nor the object of publications without our consent. Copies may only be made for archive purposes or as replacements. If originals bear a notation indicating copyright protection this notation must also be affixed to the copies by the customer.
- (2) The customer shall be granted a non-exclusive and non-transferrable right of use to programmes and the accompanying documentation provided by us as well as retrospective supplements for use by the customer in connection with the products for which the software was supplied. Insofar as special licence agreements for this are granted these shall take precedence.
- (3) Every change to the labelling of our goods in particular every removal of our appliance numbers and type signs as well as every kind of special labelling that could be seen as marks of origin of our customer or of a third party is inadmissible.
- (4) Our liability for the absence of third party industrial property rights is excluded if performances have been developed from information given by the customer or if a breach of industrial property rights occurs due to the use of the goods supplied in combination with goods supplied by us. Further our liability due to breach of industrial property rights is excluded for applications of which the customer did not inform us in advance. In all other respects liability is in accordance with sections 8 and 9.
- (5) We do not accept the return of licences provided, such as for the Blu2Light Server, unless such a return is covered by mandatory statutory provisions or our consent. This is the case, for example, if the licence is defective in type or quantity, if the licences received do not correspond to the licences specified in the contract, the customer must inform us of this no later than 10 working days after provision. Thereafter, the licences provided shall be deemed to have been accepted.

Section 11 Securing reservation of title

- (1) We reserve title to the ownership of the object of sale until receipt of all payments from the supply agreement. In the event of behaviour contrary to the agreement by the customer in particular arrears in payment we shall be entitled to take back the object of sale. Taking back an object of sale by us shall represent a withdrawal from the agreement. After taking an object of sale back we shall be authorized to exploit this item. The revenues from such exploitation shall be offset against the payables of the customer less appropriate exploitation costs.
- (2) The customer is obliged to treat the object of sale with care. The customer is in particular obliged to insure the object of sale sufficiently against losses due to fire, water damage and theft at reinstatement value. Insofar as maintenance and servicing work is necessary the customer must carry this out at their cost in good time.
- (3) In the event of distraint of other third party interventions the customer shall inform us in writing immediately so that we can file a lawsuit in accordance with section 771 ZPO. Insofar as the third party is not in a position to refund us the judicial and extra judicial costs of a lawsuit in accordance with section 771 ZPO the customer shall be liable for the shortfall we incur.
- (4) The customer is entitled to sell on the object of sale in an orderly transaction. They now assign us however all receivables in the amount of the final invoice price (including VAT) of our receivable that accrue from the resale from its purchaser or third party and regardless of whether the object of sale has been resold with or without processing. The customer is also authorized to collect this receivable after separation. Our authority to collect the receivable ourselves remains unaffected by this. We are however obliged not to collect the receivable as long as the customer meets its payment obligations from the revenues received, does not fall into payment arrears and in particular no application to open settlement or insolvency proceedings is made or payments are suspended. If this is however the case we can demand that the customer informs us of the assigned receivables and their debtor, makes all disclosures necessary for collection, surrenders the accompanying documents and informs the debtors (third parties) of the assignment.
- (5) The processing or alteration of the object of sale by the customer shall always be carried out for us. If the object of sale is processed with other objects that do not belong to us we shall acquire co-ownership of the new item in relationship to the value of the object of sale (final invoice amount including VAT) with the other processed objects at the time of processing. In any other respects the same shall apply to items that emerge from processing as for objects of sale supplied under reservation.
- (6) If the object of sale is inseparably mixed with other objects that do not belong to us we shall acquire co-ownership to the new item in relationship to the value of the object of sale (final invoice amount including VAT) with the other mixed objects at the time of the mixing. If the mixing is done in a manner in which the item of the customer is to be seen as the main item it shall be agreed that the customer transfers us pro rata co-ownership. The customer shall keep the sole ownership or co-ownership that thus emerges for us.
- (7) The customer also assigns to us the receivables to secure our receivable from it that accrues from the connection of the object of sale with a plot of land against a third party.
- (8) We are obliged to release the securities to which we are entitled on the demand of the customer insofar as the realizable value of our securities exceeds the receivables to be secured by more than 10%. The selection of the securities to be released rests with us.

Section 12 Court of jurisdiction – Place of performance

- (1) If the customer is acting commercially our registered office shall be the court of jurisdiction. We are entitled however also to file a suit against the customer at their place of residence.
- (2) The law of the Federal Republic of Germany applies. The terms of the UN Sales Convention shall not apply. In the event of dispute the German version of these general terms and conditions shall take precedence.
- (3) Insofar as nothing to the contrary arises from the order confirmation our registered office shall be the place of performance.