

General Terms and Conditions of VST GmbH

§ 1 General

1. The following terms and conditions apply to all current and future business relations with our customers and are solely authoritative for the content of concluded contracts.

2. Entrepreneurs within the meaning of the Terms and Conditions are natural or legal persons or legally capable partnerships with whom a business relationship is entered into, who are acting in the exercise of a commercial or independent professional activity.

Consumers within the meaning of the Terms and Conditions are natural persons with whom business relations are entered into without a commercial or independent professional activity being attributable to them.

Customers within the meaning of the Terms and Conditions are both entrepreneurs and consumers.

3. Any provisions deviating from these terms and conditions, in particular deviating, conflicting or supplementary general terms and conditions of customers, shall not become part of the contract, even if known, unless their validity is expressly agreed in writing. Amendments and supplements to a contract as well as subsidiary agreements shall only be binding if they are confirmed in writing. The acceptance of deliveries or partial deliveries by entrepreneurs shall in any case be deemed as acknowledgement of the terms and conditions.

4. Our presentations of deliveries and services in advertising brochures, sales prospectuses, price lists and the like shall not be deemed to be an application for a contract, but an invitation to the customer to submit an application for a contract.

5. Special rental conditions apply to the rental of goods.

§ 2 Conclusion of contract

1. Our offers are subject to change. We reserve the right to make technical changes in the sense of technical progress as well as changes in shape, colour or weight within the scope of what is reasonable.

2. By ordering goods, the customer bindingly declares that he wishes to purchase the ordered goods. We are entitled to accept the contractual offer contained in the order within two weeks of receipt. The contract shall only be concluded upon our written order confirmation. If the delivery is carried out without the buyer receiving an order confirmation beforehand, the contract is concluded by the acceptance of the delivery under these terms and conditions.

3. If the consumer orders the goods electronically, we will confirm receipt of the order immediately. The confirmation of receipt does not constitute a binding acceptance of the order. The confirmation of receipt can be combined with the declaration of acceptance.

4. The conclusion of the contract is subject to the correct and timely delivery by our suppliers. This shall only apply in the event that we are not responsible for the incorrect delivery or non-delivery, in particular if a congruent covering transaction has been concluded with our supplier. The customer will be informed immediately of the non-availability of the service. The consideration shall be refunded without delay.

5. If the consumer orders the goods electronically, the text of the contract will be stored by us and sent to the consumer by e-mail on request together with the terms and conditions.

§ 3 Prices and payments

1. The prices offered to an entrepreneur do not include the statutory value added tax valid on the day of delivery ex the manufacturer's warehouse or our distribution warehouse without assembly. Dispatch shall be at our discretion. In the case of a sale by delivery to a place other than the place of performance, the entrepreneur shall bear the shipping costs. We deliver in customary packaging. Any special packaging required (e.g. seaworthy packaging) shall be borne by the entrepreneur. In the case of delivery of goods without customs clearance, the duties and costs levied by the customs authorities shall be borne by the entrepreneur.

The prices offered to a consumer are final prices according to § 1 para. 1 Price Indication VO, but without delivery and shipping costs and without assembly.

Freight paid delivery shall only be made against separate agreement.

2. Our invoices are due and payable within 10 days after invoicing without deduction.
3. The following terms of payment apply to the system business:
 - 30 % on award of contract
 - 60 % upon delivery of the products
 - 10 % after acceptance of the complete system within 8 days, net.

The due date recognised as binding by both parties is determined and printed in the invoice according to the calendar day.

4. If the entrepreneur is in default of payment, he is obliged to pay default interest in the amount of 8% above the base interest rate. We reserve the right to prove and assert a higher damage caused by default against the entrepreneur.

If the consumer is in default of payment, he shall be obliged to pay interest on arrears at a rate of 5% above the base rate.

5. Repairs and the sale of spare parts are only issued against cash payment upon collection. If repaired goods are shipped, the invoice amount plus shipping and handling costs will be charged on a cash on delivery basis.

6. Bills of exchange can only be given with our prior consent. Bills of exchange and cheques shall in any case only be accepted on account of performance. Discount and collection charges shall be borne by the customer.

7. If the customer defaults on a due payment, or if a cheque or a promissory note issued by him is not honoured, or if other facts become known from which a considerable deterioration of the customer's financial situation results, or if there are considerable doubts about the customer's ability or willingness to pay for other reasons, we shall be entitled to demand immediate payment of all outstanding invoices, even if cheques or bills of exchange have already been given for this purpose, and to demand advance payment for all outstanding deliveries or, subject to the rights to which we are otherwise entitled, to withdraw from the contract, setting a reasonable deadline for payment. The customer can avert the assertion of these rights by providing us with adequate security.

8. We shall also be entitled to the rights set out in clause 7 if insolvency proceedings are instituted against the business of the Contractor or a corresponding application is rejected for lack of assets, or if the business of the Contractor is dissolved or liquidated, or if compulsory enforcement measures of a not insignificant scope are carried out against parts of the assets of the Customer.

9. The customer shall only have a right of retention if his counterclaim is based on the same contractual relationship.

10. The customer may only offset counterclaims which we have recognised or which have been legally established. Outstanding credit notes do not entitle the customer to withhold payments.

§ 4 Delivery time

1. Delivery periods and delivery dates promised by us are non-binding and are subject to complete and timely delivery by the upstream supplier. The delivery period shall be deemed to have been complied with if the delivery item has left the warehouse or the customer has been notified of readiness for dispatch by the time the delivery period expires. If orders cannot be executed in whole or in part at the time they are placed, we reserve the right to cancel them. The customer cannot derive any claims for damages from the delayed or failed delivery, unless we are guilty of intent or gross negligence. Compliance with the delivery deadline requires the fulfilment of all contractual obligations of the customer.

2. Partial deliveries are permissible unless the customer proves that the partial delivery is of no interest to him.

3. If we are prevented from complying with the delivery deadline due to unforeseen circumstances beyond our control which cannot be averted with the due diligence of a prudent businessman (force majeure), the delivery deadline shall be extended appropriately by the duration and scope of such obstacles, unless performance is definitively impossible. Force majeure shall include in particular

The customer shall be entitled to withdraw from the contract in the event of an extension of the delivery date, provided that the customer grants us an appropriate extension of time for performance. In the event of an extension of the delivery date, the customer shall be entitled to withdraw from the contract, provided that he grants us a reasonable period of grace for performance. In the event of final impossibility or inability for such reasons, we shall be released from the obligation to perform.

4. In the event of non-compliance with a delivery date or impossibility of performance for which we are not responsible, the customer shall be entitled to withdraw from the contract in the event of default, but only after setting a reasonable period of grace, with regard to all deliveries that have not been reported ready for dispatch at the expiry of the deadline. Further claims, such as claims for damages due to delayed delivery or due to non-performance, in particular claims for compensation for indirect damage, are excluded, unless we are guilty of intent or gross negligence. In the event of intent or gross negligence, the compensation for delay shall amount to a maximum of ½ percent for each full week of delay, but in total to a maximum of 5 percent of the value of the total delivery.

§ 5 Right of withdrawal and return for consumers in distance contracts

1. In the case of a distance contract, the consumer has the right to revoke his declaration of intent to conclude the contract within two weeks after receipt of the goods. The revocation does not have to contain a reason and must be declared to us in text form or by returning the goods; timely dispatch is sufficient to meet the deadline.

2. When exercising the right of withdrawal, the consumer is obliged to return the goods if they can be sent by parcel. The consumer shall bear the costs of the return shipment when exercising the right of revocation for an order value of up to EUR 40, unless the delivered goods do not correspond to the ordered goods. In the case of an order value of more than EUR 40, the consumer does not have to bear the costs of the return shipment.

3. The consumer shall pay compensation for any deterioration caused by the intended use of the goods. The consumer may examine the goods carefully and cautiously. The consumer shall bear the loss of value that results from the use going beyond mere inspection and which means that the goods can no longer be sold as "new".

4. The costs of returning goods shall be borne by the consumer, unless the delivered goods do not correspond to the ordered goods. The consumer must provide proof of the return.

5. There is no right of withdrawal for the delivery of goods that are manufactured according to customer specifications or clearly tailored to personal needs, or which are not suitable for return due to their nature, or for software if the data carriers delivered have been developed by the consumer.

§ 6 Dispatch, transfer of risk and acceptance

1. Dispatch takes place from the delivery warehouse.

2. If the buyer is an entrepreneur, the risk of accidental loss and accidental deterioration of the goods shall pass to the entrepreneur upon delivery of the notice of availability, upon handover, in the case of a mail order purchase upon delivery of the goods to the forwarding agent, the carrier or to the person otherwise designated to carry out the shipment, but no later than the time at which the goods leave our distribution warehouse, whichever event occurs earlier. This shall also apply if freight-free delivery has been agreed.

If dispatch is delayed due to circumstances for which the Contractor is responsible, the risk shall pass to the Contractor from the day on which the goods are ready for dispatch; however, the Supplier shall be obliged, at the request and expense of the Contractor, to take out the insurance cover requested by the latter. The entrepreneur shall also bear the risk of accidental loss during transport insofar as he returns the defective goods to us during the warranty period or sends the goods to a repair company named by us.

3. If the customer is a consumer, the risk of accidental loss and accidental deterioration of the goods shall not pass to the consumer until the goods have been handed over, even in the case of a sale by dispatch.

4. The customer is obliged to accept the goods ready for dispatch. The handover shall be the same if the customer is in default of acceptance.

§ 7 Retention of title

1. In the case of contracts with consumers, we retain ownership of the goods until the purchase price has been paid in full.

In the case of contracts with companies, we retain ownership of the goods until all claims arising from an ongoing business relationship have been settled in full.

2. The customer is obliged to treat the goods with care. If maintenance and inspection work is required, the customer shall carry this out at his own expense.

3. Until revoked, the entrepreneur is authorised to sell the goods subject to retention of title in the ordinary course of business. He already now assigns to us all claims in the amount of the invoice amount which have accrued to him against a third party through the resale. We accept the assignment. After the assignment, the entrepreneur is authorised to collect the claim. We reserve the right to collect the claim ourselves as soon as the entrepreneur does not meet his payment obligations properly and is in default of payment. If the entrepreneur's customer insists on a prohibition of assignment, the entrepreneur must inform us of this immediately. If the entrepreneur cannot provide sufficient other security for our claims, we shall be entitled in such cases to prohibit the resale of the goods delivered by us to customers with a prohibition of assignment.

4. The entrepreneur is obliged to provide us with information on the stock of reserved goods and assigned claims upon request. In the event of access by third parties to the goods subject to retention of title or the assigned claims, the entrepreneur must inform us immediately and support us in asserting our rights, in particular to take the necessary legal remedies on his part to protect our rights.

5. The customer is obliged to inform us immediately of any access by third parties to the goods, for example in the event of seizure, as well as any damage to or destruction of the goods. The customer must notify us without delay of a change of ownership of the goods as well as a change of his own place of residence or a change of his place of business.

6. We shall be entitled without further ado to withdraw from the contract and demand the return of the goods in the event of conduct on the part of the customer in breach of contract, in particular in the event of default in payment and the occurrence of a significant deterioration in the customer's financial circumstances. The entrepreneur is then obliged to allow us access to his premises and to take possession.

7. The entrepreneur is obliged to insure the reserved goods according to the principles of a prudent businessman and already now assigns to us any insurance claims or other claims for compensation due to loss or deterioration of the reserved goods.

8. The treatment and processing of our reserved goods by an entrepreneur shall be carried out for us without any obligations arising for us. In the event of processing, combining, mixing and blending of our reserved property with goods not belonging to the entrepreneur, we shall acquire co-ownership of the new goods in the ratio of the invoice value of the reserved property to the value of the goods of third parties at the time of processing, combining, mixing or blending.

9. If the value of the securities existing for us as a whole exceeds our claim by more than 20 %, we shall be obliged to release such securities at the request of the entrepreneur.

§ 8 Warranty

1. If the purchaser is an entrepreneur, we shall initially provide warranty for defects in the goods at our discretion by rectification or replacement delivery.

2. If the buyer is a consumer, the following procedure shall be regulated, taking into account our economic interests, in order to remedy a defect in the goods:

In the case of products with a value of less than EURO 100, the consumer can initially only demand a replacement delivery. If the value of the goods exceeds EURO 100, we shall initially be entitled to attempt to rectify the defect within a reasonable period of time. A rectification period of 20 working days shall be deemed reasonable. If the rectification is not economically reasonable, the rectification shall be carried out by means of a replacement delivery.

3. If the rectification or replacement delivery fails, the customer may, at his discretion, demand a reduction of the remuneration (abatement) or rescission of the contract (withdrawal). In the event of only a minor breach of contract, in particular in the event of only minor defects, the customer shall not be entitled to withdraw from the contract.

4. Entrepreneurs must notify us in writing of obvious defects within a period of 2 weeks from receipt of the goods, otherwise the assertion of the warranty claim is excluded. Timely dispatch shall be sufficient to meet the deadline. The entrepreneur shall bear the full burden of proof for all claim prerequisites, in particular for the defect itself, for the time of discovery of the defect and for the timeliness of the notice of defect.

5. Entrepreneurs shall inspect the goods immediately after delivery to ensure that they are free of defects and complete and shall notify us immediately of any defects discovered. If the entrepreneur fails to carry out a timely inspection or to notify us of a defect, the delivered goods shall be deemed to have been approved, unless the defect was not recognisable during the inspection. Defects discovered later shall also be notified to us without delay; otherwise the goods shall be deemed approved also with regard to these defects. The notice of defect must be made in writing and must describe the defect complained of in detail. In all other respects §§ 377 f. HGB shall apply accordingly.

6. Consumers must inform us in writing about obvious defects within a period of two months after the time at which the condition of the goods contrary to the contract was determined. The receipt of the notification by us is decisive for the observance of the deadline. If the consumer fails to provide this information, the warranty claims shall expire two months after the defect has been discovered. This shall not apply in the event of fraudulent intent on the part of the seller. The burden of proof for the time of discovery of the defect lies with the consumer. If the consumer was persuaded to purchase the goods by inaccurate statements made by the manufacturer, the consumer bears the burden of proof for his purchase decision. In the case of second-hand goods, the consumer bears the burden of proof for the defectiveness of the item.

7. If the customer chooses to withdraw from the contract due to a legal or material defect after subsequent fulfilment has failed, he shall not be entitled to any additional compensation due to the defect.

If the customer chooses compensation for damages after subsequent performance has failed, the goods shall remain with the customer if this is reasonable for him. The compensation is limited to the difference between the purchase price and the value of the defective item. This does not apply if we have fraudulently concealed the breach of contract.

8. The warranty period for new goods is one year for entrepreneurs and two years for consumers from delivery of the goods. For used goods, the warranty period for consumers is 1 year. For entrepreneurs, the warranty for used goods is excluded insofar as it has not been separately agreed in writing. This does not apply if the customer has not notified us of the defect in good time in accordance with clause 4.

9. If the buyer is an entrepreneur, only the manufacturer's product description shall be deemed agreed as the quality of the goods. Public statements, recommendations or advertising by the manufacturer do not constitute a contractual description of the quality of the goods.

10. If the customer receives defective assembly instructions, we are only obliged to deliver assembly instructions free of defects and this only if the defect in the assembly instructions prevents proper assembly.

11. No warranty is assumed for damage caused by the following reasons: Unsuitable or improper use, faulty assembly or commissioning by the purchaser or third parties, natural wear and tear, faulty or negligent handling, unsuitable operating materials, defective construction work, unsuitable building ground, chemical, electrochemical or electrical influences, insofar as they are not the fault of the supplier.

12. The customer does not receive any guarantees in the legal sense from us. Manufacturer's guarantees remain unaffected by this.

13. Repairs carried out during the warranty period do not lead to an extension of the warranty period.

14. A prerequisite for the warranty claims of entrepreneurs is that the defective delivery item can either be inspected and checked by us at the entrepreneur's premises or, at our request, be sent to us or to a repair company designated by us in proper safe packaging, carriage paid and at the risk of the entrepreneur. Replaced parts become our property.

15. Any liability for the consequences resulting from modifications and repair work carried out on the goods by the customer or third parties is excluded.

16. The assignment of warranty claims to third parties is excluded.

§ 9 Liability

1. In the case of slightly negligent breaches of duty, our liability shall be limited to the foreseeable, direct average damage typical for the contract according to the type of goods. This also applies to slightly negligent breaches of duty by our legal representatives or vicarious agents.

We shall not be liable to entrepreneurs in the event of a slightly negligent breach of immaterial contractual obligations.

2. The above exclusions and limitations of liability shall not apply in cases of strict liability, in particular under the Product Liability Act, in the event of culpable bodily injury or damage to health or loss of life.

3. Claims for damages by the customer due to a defect shall become statute-barred one year after delivery of the goods. This does not apply if we can be accused of fraudulent intent.

§ 10 Repair service

Items that are handed over or sent to us for repair outside of the warranty must be packed in the original packaging or otherwise properly and securely for transport. If the repair is not carried out, the costs of a cost estimate prepared at the request of the customer will be charged. In the repair service, we provide a warranty of 6 months on the work carried out. Defects due to functional wear and tear are excluded from this.

§ 11 Final provisions

1. The law of the Federal Republic of Germany shall apply. The provisions of the UN Convention on Contracts for the International Sale of Goods shall not apply.

2. Should any provision of these terms and conditions be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions. The wholly or partially invalid provision shall be replaced by a provision whose economic success comes as close as possible to that of the invalid provision.

3. If the customer is a merchant, a legal entity under public law or a special fund under public law, the place of jurisdiction for all disputes arising from this contract shall be the registered office of [VST GmbH in Saalfeld](#), subject to the proviso that we are also entitled to bring an action at the location of the registered office or a branch of the customer. The same shall apply if the customer does not have a general place of jurisdiction in Germany or if the customer's place of residence or habitual abode is unknown at the time the action is brought.

4. Insofar as we are obliged to take back sales or transport packaging in accordance with the Packaging Ordinance, the customer shall make this packaging available free of charge at our delivery warehouse, cleaned, free of foreign substances and separated according to material type.

5. The customer agrees that we may use the data obtained from the business relationship with him/her for our own business purposes within the meaning of the Data Protection Act.

6. Amendments to these provisions are only possible in writing. The written form agreement can likewise only be amended in writing.

May 2006