

GENERAL TERMS & CONDITIONS of VICODA GmbH

SCOPE

For our deliveries and services, the following conditions of delivery and service apply. The Purchaser's terms and conditions and any agreements departing from our general terms and conditions apply only if expressly agreed to by us in writing.

I. Quotes

Any documentation provided with the quote, such as illustrations, drawings, weights, dimensions, is not to be considered in any way definitive unless it is expressly declared to be binding. All technical documents such as drawings, calculations etc. are proprietary. They can be made available to a third party only after our approval has been given. We will adhere to the same requirements of non-disclosure of Purchaser's documents marked as confidential or proprietary.

II. Scope of delivery

1. For the scope of delivery, the written confirmation of an order applies. Other agreements and alterations require the written agreement of the contract parties.
2. Partial deliveries are permissible and are invoiced individually.

III. Prices and terms of payment

1. Insofar as not expressly agreed otherwise, our prices apply ex works, including onloading at the factory but excluding packaging and unloading (EXW Zeven, Incoterms 2010 ICC) plus sales tax, if applicable.
2. Insofar as not expressly agreed otherwise in individual cases, payment of invoices is due within 14 days from the date of invoice.
3. Invoicing is made on delivery or on notice of readiness of dispatch / of acceptance.
4. On default of payment we are entitled to charge interest for arrears at 5% above the prevailing basic rate of the European Central Bank. We reserve the right of enforcement in the event of further damage due to delay.
5. It is not permitted to withhold payments or charge our account on the basis of claims made against us on the part of the Purchaser.

IV. Delivery

1. The term of delivery commences with the dispatch of our confirmation of the order, but not before reception of documentation and clearances to be supplied by the Purchaser together with reception of an agreed down payment.
2. Notice of readiness for dispatch or collection constitutes the date of delivery.
3. Should shipments be delayed due to acts of God or other events beyond our influence, such as, for example, labor disputes, particularly strikes and lock-outs, then delivery may be reasonably delayed. We shall inform the customer at once of any such delays.
4. Should shipment be delayed at the Purchaser's request, the resulting storage costs, commencing one month after information about readiness for dispatch and representing, however, at least 1% of the amount of the invoice for every month commenced, can be charged to the Purchaser's account.
5. Observation of the delivery date presupposes fulfilment of contractual obligations by the Purchaser.

V. Dispatch, passing of risk and receipt

1. Any agreed trade term shall be construed in accordance with the INCOTERMS in force at the formation of the contract. If no trade term is specifically agreed, the delivery date shall be Ex Works (EXW).
2. Goods due for delivery are to be accepted without delay by the Purchaser, otherwise we are entitled to ship the goods on our own initiative or store them at the Purchaser's expense and risk. In the absence of an agreement in this respect, the means of transport and the route taken will be determined by us.
3. On dispatch of goods from the works or warehouse, at the latest however on transfer to road, rail or carrier or at the commencement of storage, title and risk are assumed by the Purchaser, also when delivery is made on our initiative.
4. Components delivered are to be accepted by the Purchaser without prejudice to the rights laid down in Section VII, even if slight defects are evident.

VI. Retention of title

1. We retain title to all goods until receipt of all payments issuing from the business relationship with the customer.
2. On breach of contract by the Purchaser, particularly on default, we are entitled to repossession after allowing appropriate days of grace; the Purchaser is under obligation to release the goods. Our retention of title as well as the repossession of goods delivered does not constitute a withdrawal from the contract.
3. The Purchaser is entitled to sell the products to a third party in the normal course of business; however, he assigns to us all claims on the amount of the purchase price agreed between us and the Purchaser (including value-added tax) which arise for the Purchaser from a further sale, irrespective of whether the products are sold with or without further processing; we agree and engage not to exact these claims as long as the Purchaser duly complies with his obligations towards payment and is not in default. If this should however be the case, we can require that the Purchaser makes known the assigned claims and their debtors, surrenders all documents required for collection of payment and informs the debtors of the assignment. Insofar as retention of title exists, the Purchaser is entitled neither to pledge nor to assign the products as security. In the event of pledging, confiscation or similar actions by third parties, we are to be informed without delay.
4. The Purchaser shall at the request of the Supplier assist in taking any measures necessary to protect the Supplier's title to the products in the country concerned.

VII. Liability for defects

1. We warrant the flawless manufacture and expressly guaranteed properties of the products supplied by us according to the agreed technical requirements. If we supply products according to the Purchaser's drawings, specifications, samples, etc., the Purchaser then bears responsibility for their suitability for the intended purpose. The crucial factor for the condition of the products as per contract is the moment of assumption of risk according to clause V.3.
2. For all VICODA components a 2-year warranty is issued from date of commissioning, limited to 3 years after transfer of ownership.

3. The Purchaser shall without undue delay notify the Supplier in writing of any defect which appears. Such notice shall under no circumstances be given later than two weeks after the expiry of the period given in clause VII.2. The notice shall contain a description of the defect. If the Purchaser fails to notify the Supplier in writing of a defect within the time limits set forth in the first paragraph of this clause, he loses the right to have a defect remedied. Where the defect is such that it may cause damage, the Purchaser shall immediately inform the Supplier in writing. The Purchaser shall bear the risk of damage resulting from his failure to notify. If the Purchaser has given such notice and no defect is found for which the supplier is liable, the Supplier shall be entitled to compensation for the costs he has incurred as a result of the notice.
4. If acceptance of the products has been made, no claims can be permitted for defects which should have been noted on acceptance or initial inspection.
5. VICODA must be given opportunity to assess the defect censured. The product in question shall be returned to us without delay, if required; we shall bear the cost of transportation if the complaint is justified. The Purchaser shall follow the Supplier's instructions regarding such transport. Should the Purchaser not comply with these requirements or make alterations to the product in question without our agreement, then all warranty claims are null and void.
6. In the event of justifiable complaint within the prescribed period of time we will either repair the product in question or supply a new replacement.
7. This warranty does not extend to defects resulting from inappropriate or improper use, incorrect installation or operation by the Purchaser or a third party, nor to normal wear and tear, nor to incorrect or negligent treatment nor to alterations or repair work by the Purchaser or a third party carried out without our agreement.
8. Should we fail to fulfil justified warranty obligations according to contract within an appropriate period of time, the Purchaser can set us a deadline in writing within which we must fulfil our obligations. In the event of default, the Purchaser can demand a reduction in price or make the necessary improvements at our expense and risk or have them made by a third party. Should the improvements be carried out successfully by the Purchaser or a third party, then all claims by the Purchaser are settled on payment of the costs incurred.
9. When a defect in a part of the product has been remedied, the Supplier shall be liable for defects in the repaired or replaced part under the same terms and conditions as those applicable to the original product. For the remaining parts of the product the warranty period mentioned in clause VII.2 shall be extended only by a period equal to the period during which the product has been out of operation as a result of the defect.
10. Save as stipulated in these clauses 1-9, the Supplier shall not be liable for defects. This applies to any loss the defect may cause including loss of production, loss of profit and other indirect loss.

VIII. Allocation of liability for damage caused by the product

1. The Supplier shall not be liable for any damage to property caused by the product after it has been delivered and whilst it is in the possession of the Purchaser. Nor shall the Supplier be liable for any damage to products manufactured by the Purchaser, or to products of which the Purchaser's products form a part.
2. If the Supplier incurs liability towards any third party for such damage to property as described in the preceding paragraph, the Purchaser shall indemnify, defend and hold the Supplier harmless.
3. If a claim for damage as described in this clause is lodged by a third party against one of the parties, the latter party shall forthwith inform the other party thereof in writing.
4. The Supplier and the Purchaser shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal examining claims for damages lodged against one of them on the basis of damage allegedly caused by the product.

IX. Consequential losses

Save as otherwise stated in these Terms and Conditions there shall be no liability for either party towards the other party for loss of production, loss of profit, loss of use, loss of contracts or for any other consequential or indirect loss whatsoever.

X. Force majeure

1. Either party shall be entitled to suspend performance of his obligations under the contract to the extent that such performance is impeded or made unreasonably onerous by any of the following circumstances: industrial disputes and any other circumstances beyond the control of the parties such as fire, war, extensive military mobilization, insurrection, requisition, seizure, embargo, restrictions in the use of power and defects or delays in deliveries by sub-contractors caused by any such circumstances referred to in this clause. A circumstance referred to in this clause whether occurring prior to or after the formation of the contract shall give a right to suspension only if its effect on the performance of the contract could not be foreseen at the time of the formation of the contract.
2. The party claiming to be affected by Force Majeure shall notify the other party in writing without delay on the intervention and on the cessation of such circumstances. If Force Majeure prevents the Purchaser from fulfilling his obligations, he shall compensate the Supplier for expenses incurred in securing and protecting the product.
3. Regardless of what might otherwise follow from these General Conditions, either party shall be entitled to terminate the contract by notice in writing to the other party if performance of the contract is suspended under this clause for more than three months.

XI. Disputes and applicable law

1. All disputes arising out of or in connection with the contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules.
2. The contract shall be governed by the substantive law of Germany.