

These General Terms are a translation of the German "Allgemeine Lieferbedingungen" of Vector Foiltec GmbH. In case of differences between the German and the English version the German version shall prevail.

## **General Terms and Conditions of Sale and Delivery**

### **Vector Foiltec GmbH - Steinacker 3 - 28717 Bremen**

The following Terms and Conditions of Sale and Delivery form an essential part of all our tenders and of the contractual relationships into which we enter about our deliveries, insofar as we do not expressly consent to divergences from them in writing. Our contracting parties acknowledge our Terms and Conditions of Sale and Delivery when they place a purchase order or at the latest with acceptance of our deliveries respectively. Our customer is accordingly described as the buyer in the following text, irrespective of whether the matter concerns a delivery with or without assembly by us. These Terms and Conditions of Sale and Delivery do not apply to the purchase orders that we place ourselves: our General Conditions of Purchase apply in that case.

## **I. Extent of the delivery and services**

1.) Our written confirmation of order is solely decisive for the extent of the deliveries or other work or both. An objection by the buyer to it is only considerable, insofar as it is expressly made in writing immediately. A purchase order applies as agreed according to our quotation, insofar as we do not confirm the order. The extent of the purchase order applies according to the buyer's enquiry but it is subject not only to the unrestricted basis of our Terms and Condition of Sale and Delivery but also to all of the restrictions that we could have imposed, insofar as we have not given a confirmation of order and a quotation too.

2.) The documents that supplement our quotation (illustrations and drawings as well as dimensional and quantitative information, etc.) are only approximate and they are given uncommittedly; we reserve the right to modify the products and constructions, insofar these modifications are reasonable for the buyer. We reserve the proprietary right and the copyright to cost estimates, drawings, operating instructions and similar documents; the buyer is not allowed to make them accessible to third parties.

3.) The buyer's claims because of culpably infringing a secondary obligation arising from the contract – especially because of giving faulty advice – cannot be asserted unless we have given written confirmation expressly in this respect. This rule does not apply insofar as we might be accused of (criminal) intent or gross negligence, nor does it apply to the cases of injuring life, limb and health.

## **II. Payments**

The payment is – insofar as no other agreements have been made – basically due for payment in total and immediately without delay in the case of making the delivery, or when the work has been completed in the case that we are obligated to assemble the delivered products. We are entitled in the same way to demand reasonable immediate payments on account without delay according to the buyer's betterment, concerning the partial services. If we agree deliveries or other work without agreeing immediate payment by the buyer while agreeing payment of a presented invoice and subject to granting a period of payment, then it is agreed that a period of payment of 21 days applies to the payments on account and a period of payment of 30 days applies to the final accounts or final invoices from the date when the invoices are received (Saturdays are included in the calculation). We are always entitled to demand a security according to Article 648 a) of the German Civil Code in the case of orders that include assembly, or to demand a similar security according to Article

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648 a) of the German Civil Code for simple delivery orders without our assembly. We are entitled to charge interest of 12 % above the basic rate of interest that is set by the German Central Bank, starting from the due date for payment of an invoice or in the case of exceeding a payment date, without the buyer having to be in arrears separately. Our reminders do not signify any postponement of the due date for payment. If the buyer does not comply with the agreed terms of payment, or if he refuses to fulfil the contract, or if we become aware after concluding the contract that his creditworthiness appears to be doubtful with reference to the concluded contract, then our entire debt claims arising from the contractual relationship will be due for payment immediately. We will then be entitled in addition to still carry out the outstanding services only in return for cash in advance, or – at our discretion – to make further services dependent upon a security according to Article 321 of the German Civil Code. We are also entitled to withdraw from the contract in the case of default with pledging the security, subject to maintaining our claims because of lost profit. In addition, the right will then be vested in us to recover the goods which are subject to the reservation of ownership and have been delivered already, as well as to demand compensatory damages because of non-fulfilment, or to demand that the delivered article be sent back to us, without waiving our claims that are valid until the debt has been settled. All of the costs – even those which arise because of the renewed delivery – will be borne by the purchaser, in the case that the delivered article is taken away. The buyer also has to reimburse us for the detriment that has been caused through no fault of our own, besides the damages for using the delivered article in the case of a withdrawal and he also has to reimburse us for all of the costs and lost profit which have arisen and are associated with entering into the contract and withdrawing from it.

### III. Deadlines for delivery and assembly

Our information about the deadlines for delivery and assembly is given to the best of our knowledge. These deadlines are non-binding insofar as nothing else has been assured in writing and they will be prolonged if there is an onset of unforeseeable hindrances for no fault of our own, which affect us or one of our upstream suppliers, according to the significance of the hindrance. The deadline for delivery will not begin before the buyer has acknowledged our confirmation of order in writing, even in the case of exceptionally giving information about a deadline for delivery that has been expressly declared as binding; the deadline for delivery will only begin to run after receiving any agreed down-payment. In addition, the prerequisite is clarification of all the technical details about the delivery, insofar as we have not stipulated them ourselves. The deadline for delivery will also be complied with, in the case that we have notified our readiness for despatch in good time. If we are responsible for a delay, then the buyer will be entitled to set us a reasonable period of grace (at least 4 weeks however) and to withdraw from the contract after this period has expired fruitlessly. The buyer's further claims because of delayed delivery are excluded, insofar as we should not be accused of anything more than simple negligence. Partial deliveries are permissible, without us having to incur any extra costs for them. All cases of force majeure, as well as all cases of unrest, strikes, lockouts, operational interruptions, restrictions and lack of raw materials and operating resources, etc., entitle us to postpone the delivery for the duration of the hindrance and to set a reasonable start-up time after the hindrance has ended. If it is unreasonable for one of the parties to implement the contract on account of such events, then he can withdraw from the contract. However, the buyer's claims to compensatory damages or other reimbursement are excluded in the case of such a withdrawal. If the hindering circumstances only affect the assembly and we have already prefabricated substantial parts of the delivery, then the buyer's withdrawal is excluded. The buyer has to notify the building control office about the building project and he has to apply for permission in individual cases if there is a requirement for approval of the erection or building and the existence of this permission must be proved to us at any time on demand.

## IV. Reservation of ownership

The delivered article remains our property until full payment has been made or until any checks or bills of exchange have been fully redeemed. Our proprietary right also prevails even in the case that payments have been made which equal the amount of remuneration for one or several articles or for specific deliveries. In fact, all of the claims that are vested in us to every single delivered article because of the connection with the buyer remain in existence until they have been settled. If a payment has not been made on time despite a demand, or it has not been made according to Article 321 of The German Civil Code, then the irrevocable right is always vested in us to collect our delivered articles for the purposes of securing our reserved ownership and to safeguard them until full payment has been made in every case when compulsory enforcement measures have been taken against the buyer, irrespective of our other claims. Nevertheless, the collection and safeguarding do not represent any withdrawal from the contract. The buyer expressly and irrevocably grants us the right to enter the place where the delivered items are stored or to arrange for our authorized representatives to enter it for the purposes of inspection, collection and loading, etc. The buyer is not allowed to either pledge or transfer the articles that we have delivered before he has made full payment and the ownership of them passes to him; even not for the purposes of security. We must be informed immediately about any seizures by means of a registered letter. Our assertion of claims to the reservation of ownership as well as to the seizure does not apply as a withdrawal from the contract. Insofar as the buyer has received the authorization from us that he can sell the goods that we own (conditional commodities) in the ordinary course of business, he assigns to us herewith all of the debt claims arising from the resale for the purposes of settlement: namely, irrespective of whether the conditional commodities will be sold without processing or after processing, or whether they are connected with a parcel of land or not, or whether they are connected with a chattel or not. If the conditional commodity will be resold after processing or connection with other goods that do not belong to us, or if they are connected to a parcel of land or to a chattel, then the buyer's debt claims against his own purchaser or customer will apply as assigned to us at the amount of the delivery price that was agreed between the buyer and ourselves for the conditional commodity. The buyer is only authorized to collect this debt claim; even after the assignment. Our authorization to collect the debt claim ourselves remains unaffected by that; nevertheless, we undertake not to do so for as long as the buyer complies with his payment obligations and if a case according to Article 321 of the German Civil Code (endangerment of our claims to payment) does not arise. If the buyer makes use of the authorization to collect the debt claims, then the collected proceeds will be vested in us at the amount of the delivery price that was agreed between the buyer and ourselves for the conditional commodity. We are ready to reduce both our reservation of ownership and the aforementioned regulated assignment of the debt claim in response to the buyer's appropriate demand, insofar as it clearly exceeds our need for security in this respect.

## V. Liability for defects in the delivered articles and in other work

All complaints must be notified to us immediately. The right is vested in us to inspect and check the criticized delivery or work in an unchanged condition, in the case of every customer's complaint or notice of defects. If defects are notified to us which the checking proves are not our responsibility, then we will be entitled to charge for the costs that we have incurred through the checking. The buyer can only demand remedial work or delivery of a replacement in the case that we acknowledge the defects. Nevertheless, the buyer expressly reserves the right at his discretion to demand a reduction of the remuneration or that the contract is revoked, in the case that the remedial work or the delivery of a replacement fails. However, he cannot demand the latter if an item of building work is the object of our duty of performance and warranty. We can refuse to remedy the defects for

as long as the buyer does not fulfil his obligations. If the buyer has unilaterally made modifications or done repair work to our delivered articles and work, or if he has arranged for them to be carried by third parties, then our defects liability will lapse insofar as these measures make it difficult to establish or remedy the defects. The buyer's further claims, especially a claim to compensatory damages which did not arise from our delivery and other work themselves, are null and void insofar as nothing else has been expressly agreed. Insofar as the aforementioned provisions do not contain any diverging regulations and subject to the regulation in the following sentence, the buyer's claim for compensatory damages is excluded irrespective of whatever legal reason (e.g., arising from impossibility, non-fulfilment, positive infringement, impermissible action, settlement or co-debtors, etc.); nevertheless, we are liable for the (criminal) intent or gross negligence of our legal representatives and managing employees, as well as for the subcontractors and vicarious agents, within the framework of compulsory legal regulations. We are only liable for the slightly negligent conduct of our legal representatives, our managing employees and our subcontractors and vicarious agents, insofar as a cardinal duty has been infringed and the damage was foreseeable. Our liability for grossly negligent conduct is limited to the foreseeable damage, insofar as a cardinal duty has not been infringed. The legal liability in the cases of injuring life, limb or health is not limited whenever the negligence was more than slight. We reserves the right to make modifications on account of technical innovations, new DIN regulations or similar developments, insofar as these modifications are reasonable for our buyer.

## VI. Prerequisites for assembly

The buyer is liable for the dimensional accuracy and stability of the upstream contractor's work as well as for obtaining the requisite building permits. It is also the buyer's task to obtain any requisite permission in individual cases. Masonry and sealing are not part of our work. The building site and its entrance must be passable for vehicles with payloads of up to 20 tons (axle load) in all weathers. The condition of the building site's terrain must enable the delivered parts to be taken out of the store and assembled. The buyer has to dismantle any overhead cables or power lines in good time. We must be provided with free electricity and connections (15 kW at 220 V and 380 V) on the building site. We will charge separately for hindrances to the assembly. We are basically not equipped to deal with hindrances to the assembly and therefore we are also entitled to suspend our work until the buyer has eliminated them.

## VII. Implementing the assembly

The buyer will arrange for supports, anchors, etc., to be cast or grouted immediately after aligning our construction – insofar as necessary – and still while our fitters and erectors are present. Only our employees are allowed to do the building work on the building site during the period of assembly and until this work has been accepted. We exclude any liability for the consequences of non-compliance. We are entitled to employ suppliers and subcontractors. If any instructions that have been issued by supervisory bodies, statutory authorities or testing engineers arrive belatedly, or if extra costs result from such delays, then they will be charged to the buyer and they can result in postponed deadlines. An express contractual agreement is required for doing any subsequent connecting work on existing buildings or parts of buildings and transitions, if such work is generally not within the scope of work. Insofar as moulded components, downpipes and similar items cannot be connected during the assembly, the buyer must do this laying work at his own cost afterwards. The buyer must continue to care for the assistants that he provides (social-security contributions, insurances, etc.).

## VIII. Interruptions or modifications of the assembly

The buyer must bear the full extent of the costs and other consequences that arise from those interruptions on the building site for which we are not responsible. Changes, supplements and similar alterations that differ from the building plans must be agreed solely with our management. Arrangements that are made with our fitters and erectors on the building site are only binding on us, subject to the prerequisite of them being expressly confirmed by our management; we have not authorized our fitters and erectors to make any such arrangements, nor to issue or accept any declarations on our behalf.

## IX. Work that includes assembly (work contracts)

We only carry out such work subject to the general contractual conditions for carrying out building work, as stated in Part B of the VOB, which are currently valid. However, our Terms and Conditions of Delivery and Sale, as well as our Terms of Payment, or our other individual contractual stipulations, or both, take precedence over Part B of the VOB.

## X. Place of performance<sup>1</sup> and place of jurisdiction<sup>2</sup>

1.) The legal relationships that exist between our contractual party and ourselves are solely subject to the law of the Federal Republic of Germany and they exclude the so-called UN Purchase Law<sup>3</sup>.

2.) Bremen is the supplementary place of jurisdiction for settling all disputes arising from the contractual relationship, which also includes lawsuits about bills of exchange and cheques, if the buyer is a businessman for the purpose of Article 38 of the German Code of Civil Procedure. If one or several of the provisions in this contract is inoperative, then the operativeness of the remaining provisions will not be affected as a result.

<sup>1</sup> *domicilium executandi*

<sup>2</sup> *domicilium disputandi*

<sup>3</sup> United Nations Convention on Contracts for the International Sale of Goods

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