

As at 09/2009

**Preamble**

These General Terms and Conditions of Sale apply to all present and future business relationships with our clients unless they are 'consumers' within the meaning of section 13 of the German Civil Code in respect of sales and other contractual performances by VARIOVAC including assembly performances, unless other written agreements have been reached.

**I. Conclusion of contract**

1. All offers are subject to change and are non-binding.
2. Any statements made in our range of products list, in brochures or in our offers or other documents attached to confirmations of order are only binding if designated as such. We reserve the right to make design changes provided the agreed performances are not impaired.
3. Dimensions and illustrations are only binding for the execution of the delivery if specifically confirmed by us.
4. We will make a decision on the offer of a contract contained in the order within two weeks of our receiving it, otherwise the binding effect of the order will no longer apply. The contract of sale is initiated through written confirmation of the order or through signing of a written agreement by both parties.
5. Automatic confirmations of receipt in the case of orders sent by e-mail do not constitute acceptance.

**II. Scope of supply**

1. The confirmation of order or the contract signed by both parties specifies the scope of delivery, the price and the terms and conditions of delivery and payment. Modifications are only valid if they are agreed in writing.

**III. Prices**

1. All prices should be understood as ex works, net, excluding packaging, shipping costs and insurance, unless agreed otherwise.
2. If material and labour costs increase between the time of concluding the purchase contract and the agreed delivery date and these affect the contract performance, then we shall be entitled to adjust the price at our discretion (section 315 German Civil Code). This applies only if the time between conclusion of the contract and the agreed delivery date exceeds 6 months.

**IV. Payments**

1. Bank drafts and cheques are only deemed to be payments after they have been honoured. We provide any guarantee of timely bill protest.
2. Should the amounts owed to us by the purchaser be compromised, we shall be entitled to demand the provision of securities. If the requested security is not provided, we can demand the immediate payment of not yet due installments or declare withdrawal from the contract.
3. The purchaser may only settle with undisputed or legally established amounts owed.
4. In the case of default on the part of the purchaser, the legally stipulated interest will be applied. However, we expressly reserve the right to assert claims for greater damages caused by delay.

**V. Delivery time**

1. The specified deadlines for delivery are calculated from the time when the purchaser fulfils any duty to pay in advance and has satisfied any other obligatory conditions on his part that are necessary for the fulfilment of our duty to deliver.
2. The agreed delivery time is considered to be fulfilled if the object of supply is available and ready for dispatch in our factory on this date. Partial deliveries beforehand are permissible at any time.

3. Unforeseen events for which we are not responsible, even if they occur in our factory or our supplier's factory, in particular cases of force majeure, work disruptions for which we are not responsible, strikes, delays in the delivery of raw materials and prefabricated parts, and events that affect the completion or delivery of the delivery object shall extend the deadlines for delivery. In such cases, we will inform the purchaser immediately of the delay.
4. If the dispatch is delayed at the purchaser's request, he will be charged for the costs arising from storage, starting one month after notice of readiness for dispatch, but in the case of storage in our company at least 1/2 percentage of the invoice amount for each month. The purchaser is entitled to prove that the actual expenditure for storage is lower than the aforementioned lump sum. However, we are entitled, after fruitless expiry of a reasonable time limit, and after informing the purchaser, to dispose of the object of supply elsewhere and to impose the additional costs arising from this on the purchaser. In this case we are entitled to re-supply the purchaser with a reasonable new delivery time.

**VI. Transfer of risk and acceptance**

1. Unless agreed otherwise, the risk is transferred to the purchaser upon the delivery object leaving the factory (i.e. when handed over to the freight forwarder).
2. Transport and customs costs, including any increase in these costs after conclusion of the contract, shall be borne by the purchaser; the same applies to any extra costs caused by a different or more expensive method of delivery having to be used than that originally foreseen.
3. The goods shall be insured only at the purchaser's request and expense.
4. Without prejudice to the rights arising from section VII, delivered objects must be accepted, even if they exhibit insignificant defects.

**VII. Warranty**

1. We provide a warranty for defects by means of rectification or the delivery of a replacement (supplementary performance), whichever we choose.
2. The elimination of defects occurs at our discretion either through repair at the purchaser's premises or in our workshops or through the supply of new parts. We must be allowed adequate time and opportunity to perform subsequent improvements. Following unsuccessful rectification or delivery of a replacement, the purchaser shall be entitled, after having set an appropriate period of grace, to reduce the purchase price or to withdraw from the contract. However, the right to withdraw is excluded in the case of only slight defects.
3. In the case of repairs carried out without our express permission and without a demand for supplementary performance on the part of the purchaser, or carried out by third parties, we shall accept neither costs nor any liability for any resulting defects or faults. The purchaser's rights arising from section 437 of the German Civil Code shall be forfeited in this case.
4. Damages due to natural wear and tear and improper treatment are excluded from any warranty.
5. You are referred to section 377 of the German Commercial Code.
6. Any parts replaced are the property of VARIOVAC and must be sent to us upon request.
7. The warranty period for defects is one year from the date of delivery of the goods, except in cases of wilful intent.
8. On principle only the manufacturer's product description is considered as agreed for the composition of the goods.
9. We do not provide any warranty in accordance with section 443 of the German Civil Code. Any warranty claims on the part of the purchaser against our pre-suppliers are not affected by this.

## VIII. Right of withdrawal

1. Events of force majeure, which make it impossible or so difficult for us to fulfil the contract that fulfilment is only possible for us with considerable financial disadvantages, irrespective of whether such events occur on our side or that of our supplier, entitle us to withdraw completely or partially from the contract. The same applies on account of circumstances for which we are not responsible, particularly if we ourselves are not supplied correctly or in due time, or if the conditions known at conclusion of contract have changed so that compliance with the contract is considerably impeded or becomes impossible. The right of withdrawal does not apply for events that are attributable to us.

## IX. Purchaser's right of withdrawal

1. The purchaser can withdraw from the contract if the entire performance becomes conclusively impossible for us before the transfer of risk. He can also withdraw from the contract if, when objects of the same kind are ordered, the execution of part of the supply becomes impossible with regard to quantity, but only if he demonstrates his lack of interest in the partial delivery.
2. The purchaser shall also be entitled to withdraw if, in the case of delayed delivery, the purchaser has set an appropriate period of grace with the express declaration that he will refuse acceptance of the performance upon the expiry of this deadline, and if we are responsible for this deadline not being met.

## X. Liability

1. We shall not be held liable in the case of slightly negligent breaches of duty, including those of our representatives or vicarious agents.
2. In the case of grossly negligent breaches of duty, our liability is limited to contractually typical, foreseeable damages.
3. The aforementioned limitations of liability in accordance with numbers 1 and 2 do not apply to claims on the part of the purchaser arising from product liability and damages arising from damage to life, limb and health. Furthermore, liability for the breaching of duties, the fulfilment of which makes the proper performance of the contract possible at all and which the purchaser may as a rule trust will be complied with, is not affected by this.

## XI. Reservation of title and copyrights

1. All objects of purchase shall remain our property until the purchaser has settled all debts arising from the contract. The reservation of title also persists for all amounts owed in relation to the delivery object, e.g. amounts owed due to repairs, spare parts, accessories and similar deliveries or other performances.
2. The reservation of title also encompasses products created by the processing, mixing or connection of the object of purchase at their full value, whereby we shall be considered to be the manufacturer. If the reservation of title of third parties persists in the case of processing, mixing or connection to their goods, we shall acquire joint ownership in proportion to the invoice values of these processed goods. The purchaser is entitled to resell goods belonging to us in the regular course of business. The purchaser surrenders to us now, by way of security, the amounts owed by third parties due to the re-sale in full or to the amount of any share of joint ownership. The purchaser is entitled until further notice, or until he ceases making payment to us, to collect these amounts owed in his own name and on our account.
4. During the period of reservation of title, the purchaser must insure the object of purchase at his own expense and at its new value against fire, water, theft and liability. The purchaser must treat the object of purchase with care.
5. In the case of a seizure of goods or other interventions on the part of third parties, the purchaser must inform us in writing without delay and must immediately notify any third parties of the reservation of title. The purchaser shall bear all costs required to annul the seizure and to repossess the object of purchase, including the judicial and extrajudicial costs of any legal

action in accordance with section 771 of the German Code of Civil Procedure, if these costs cannot be recovered by the third party.

6. The seizure, transfer by way of security, leasing or other relinquishment of the object of purchase to third parties to the detriment of our security, as well as its modification are only permitted with our express prior written agreement.
7. In the event of access by third parties to the reserved goods, the purchaser is obliged to state our ownership and to inform us immediately.
8. In the event of conduct contrary to contract by the purchaser – particularly default in payment – we are entitled, without prejudice to other claims to which we are entitled according to law or these terms – to withdraw from the contract and to take back the reserved goods or, if appropriate, to request assignment of the purchaser's claims against third parties demand. The transport costs caused by this shall be borne by the purchaser.
9. We reserve proprietary rights and copyright to our works, documents, descriptions, drawings and other documents or electronic data records, such as computer programs, digitised photos and the like. They are to be returned to us immediately on demand without further prompting.

## XII. Assembly and commissioning

1. We will only provide the necessary technical personnel and special tools for assembly and commissioning on the basis of an assembly and commissioning contract separately concluded with us.

## XIII. Miscellaneous

1. The place of fulfilment for delivery and performance is the location of the supplying factory or warehouse, and for payments it is Zarrentin.
2. The place of jurisdiction is Hagenow. At our option, we can also bring an action against the purchaser at his registered office.
3. The law applicable in the Federal Republic of Germany is to be applied to all contracts with domestic and foreign purchasers, to the exclusion of the UN purchase law.
4. Amendments to the contract, including this provision as well as additional agreements, must be made in writing in order to be effective. This also applies to the waiving of the requirement of written form.