

**General Terms and Conditions for the Supply of Goods and Services of VBS  
Fügetechnik AG  
(hereinafter referred to as "Customer")**

- Version: October 2014 -

**1. Scope of Application**

(1) These General Terms and Conditions for the Supply of Goods and Services (hereinafter referred to as: Ts&Cs) apply exclusively to these as well as future deliveries of goods and provision of services of the supplier; the Customer does not recognize conflicting, supplementing or deviating general terms and conditions, unless the Customer expressly agreed to the applicability of such terms in writing. The Customer's Ts&Cs only apply, if the supplier is a businessman (Section 14 German Civil Code [BGB]), a legal person under public law or a special fund under public law.

(2) The Customer's Ts&Cs also apply, if the Customer has knowledge of the supplier's conflicting or deviating terms and conditions and the Customer accepts or pays for products or services delivered or provided by the supplier (hereinafter referred to as: Subject Matter of the Agreement).

**2. Conclusion of an Agreement**

(1) Arrangements, orders and call-off orders, as well as amendments and supplements require the written form to be effective. Orders are deemed accepted, if the supplier does not object to the order within six (6) working days from the order date.

**3. Pricing**

(1) The Customer's prices are fixed prices, as well as DDP named place of destination (INCOTERMS 2010), including packaging, however excluding VAT.

**4. Payment, Offset etc.**

(1) Payments are to be effected as follows: Upon receipt of a proper invoice, however, not prior to the receipt of the complete delivery, within thirty (30) days with a cash discount of three percent (3%) or within sixty (60) days without any deductions.

(2) The Customer is only in default in payment, if the Customer receives a written warning after the invoice due date. The default interest rate is exclusively determined according to the statutory interest rate of the German Commercial Code [HGB] for commercial transactions.

(3) Period for payments start upon receipt of a complete, proper and verifiable invoice, however, not prior to the receipt of the complete delivery or acceptance of provided services (if acceptance is agreed).

(4) After performed delivery / provided services, invoices are to be provided to the Customer separately as a single original, including all associated documents and data. Invoices must meet statutory and accounting requirements. All invoices must include the order numbers indicated by the Customer. VAT must be shown separately on all invoices. The Customer only considers properly submitted invoices (i.e. correct, complete, proper and verifiable) as received.

(5) In the event the Customer has agreed to advance payment, the supplier is obligated, prior to receiving advance payment, to provide reasonable collateral by way of a continuing, unconditional (= waiving any defenses of failure to pursue remedies), absolute guarantee from a major German bank.

(6) The Customer is entitled to statutory offsetting and retention rights.

(7) The supplier may only assign its claims to the purchase price with the Customer's prior written consent. The above provision does not apply, if the supplier assigns its claims to financial institutions as collateral for business loans.

## **5. Place of Performance, Deliveries, Packaging**

(1) Deliveries are DDP named place of destination (INCOTERMS 2010). Accordingly, the supplier bears the risk for a thing [periculum rei] up to the point the Customer or the Customer's agent accepts the goods at the agreed location. Subject to other documentation, the number of units, weights and dimensions, the Customer determines at goods receipt are decisive.

(2) Partial deliveries are not permitted, unless the Customer expressly consented to partial deliveries. The supplier may only use sub-contractors, if the Customer has provided its prior written consent.

(3) In the event the supplier assumed assembly or installation, the supplier bears all costs in connection with assembly or installation.

(4) The supplier undertakes to use environmentally friendly packaging that is reusable or that can be disposed at favorable costs. The use of polystyrene chips as packaging material is not permitted. Packaging is to ensure protection against damage, soiling and dampness during transportation and storage such that the Customer or a service provider contracted by the Customer can perform the installation without additional work (and expenses) being required. Important notes regarding content and for storage and transport must be affixed clearly visible on the packaging. The Customer will send return packaging carriage forward to the supplier's address.

## **6. Delivery Dates**

(1) The statutory provisions apply should agreed delivery dates not be met. The supplier is obligated to notify the Customer without undue delay as soon as the supplier becomes aware of the fact that the supplier is not able to meet the agreed delivery date or other deadlines according to the agreement.

(2) The supplier may only claim missing required information or missing documentation to be provided by the Customer, if the supplier did not receive such information or documentation within a reasonable period in spite of a written warning.

(3) In the event of default in delivery, the Customer is entitled to charge a contractual penalty at a rate of 0.2% of the delayed goods net value for each working day delivery is delayed. The contractual penalty in total may not exceed 5% of the goods value. The Customer's right to assert additional damages remains unaffected.

(4) The Customer's acceptance of the delayed delivery or service without reservations does not represent a waiver of the Customer to any claims arising from the delayed delivery or service; this provision applies up to the point the Customer has paid the purchase price in full.

## **7. Reservation of Title**

(1) Title (ownership) to the delivered goods or provided service under the agreement passes to the Customer upon payment in full. The Customer is, however, authorized to process or resell the goods as agreed between the parties prior to full payment of the purchase price. Any extended or broadened reservation of title requires the Customer's express written consent.

## **8. Waste Disposal, Forbidden Materials**

(1) The supplier warrants to comply with the applicable laws on packaging of materials and return and disposal of products under this agreement, in particular, the regulations of the applicable German Packaging Ordinance and the German Electrical and Electronic Equipment Act [Gesetz über das Inverkehrbringen, die Rücknahme und die umweltverträgliche Entsorgung von Elektro- und Elektronikgeräten (ElektroG)].

(2) The supplier warrants that the products under this agreement comply with Directive 2002/95/EC "Restriction of Hazardous Substances" (RoHS) dated January 27, 2003.

## **9. Force Majeure**

(1) The Customer may withdraw from this agreement in whole or in part - without prejudice to the Customer's other rights - in the event of force majeure and other events beyond the Customer's sphere of control, if the Customer's interest in the performance of the agreement becomes obsolete as a result of these events.

## **10. Insurances**

(1) The supplier is obligated to take out and maintain third party liability insurance policies for the duration of this agreement, including warranty periods and limitation periods associated with claims of defects, on terms that are customary in the industry and which provide for a minimum coverage of EUR 2 million per claim.

## **11. Quality Assurance, Goods Receipt Inspection**

(1) The supplier is obligated to maintain a quality assurance management system according to the most recent state of technology. The supplier conducts inspections during the production process according to its QMS, unless the Customer deems a specific pre-manufacturing test necessary and instructs the supplier to conduct such tests according to the Customer's test plan. The supplier conducts the final inspection of the products, which ensures that only defect-free goods are delivered to the Customer.

(2) Acceptance of deliveries is subject to goods inspection (defect-free products), to the extent and as soon as such inspection is appropriate in the proper course of business. Goods inspection is only comprised of inspecting identity, completeness and visibly recognizable defects of the goods. Furthermore, goods inspection is substituted by the performance of quality assurance at the supplier according to Paragraph 1; in this regard, the supplier waives its defense of late notice of defects according to Section 377 German Commercial Code [HGB].

## **12. Rights in the Case of Defects**

(1) The statutory provisions regarding defects as to quality and defects of title apply without any restrictions, unless provided otherwise below.

(2) Defects as to quality and defects of title become time-barred thirty six (36) months after delivery.

(3) In the event the supplier provides new deliveries or performs overhaul or repair work on parts of the delivery during the limitation period in performance of its warranty obligations, the limitation period starts anew on the date the supplier has fully satisfied the Customer's claims to subsequent performance.

(4) The supplier is obligated to bear all costs the Customer incurs as a result of the defective delivery of products or defective provision of services under this agreement, in particular transportation, travel, work, material costs, as well as the costs exceeding the customary scope of inspections.

(5) The Customer reserves the right to take recourse against the supplier, in the event products the Customer has manufactured and/or sold are taken back by the Customer due to the defectiveness of goods or services delivered or provided by the supplier under this agreement or the purchase price of such Customer products is being reduced due to such defectiveness or the Customer has been held liable otherwise.

(6) In the case the Customer takes recourse against the supplier, the supplier is obligated to compensate the Customer for any expenses the Customer incurred due to the defectiveness of its products or services as regards the relationship between the Customer and its customers.

(7) In the event the Customer withdraws from this agreement, the Customer is authorized to gratuitously use the supplier's products and services up to the point the Customer has procured a suitable substitute for the supplier's products and services. The supplier assumes all costs and expenses caused by the Customer's withdrawal from this agreement and the supplier assumes any required disposal measures

### **13. Product Liability**

(1) In the event the Customer is held liable based on product liability, the supplier is obligated to indemnify the Customer from and against any such claims, if and to the extent the damage is caused by a defect of a product the supplier has delivered to the Customer under this agreement and – in cases of fault-based liability - the supplier is responsible for the caused damage.

(2) Provided the cause of the damage is founded within a sphere of responsibility the supplier is able to examine, the supplier bears the burden of proof in this regard.

(3) In these cases, the supplier assumes all costs and expenses, including cost of bringing an action or costs of product recall. Otherwise, the statutory provisions apply.

### **14. Intellectual Property Rights, Indemnity**

(1) To the extent the Customer provides plans, documents, sketches or other protectable information to the supplier for the performance of its services, the supplier is granted the (1) revocable, non-exclusive usage/exploitation right for the supplier's own internal use. This usage/exploitation right is limited to the period of time required for the performance of this agreement and may be revoked at any time. This usage right/exploitation right does not include reproduction, distribution, adaptation or making available to the public any of the provided information. The supplier may not use such protectable information for the performance of orders from other customers.

(2) Should the joint cooperation between the parties create new results that may be protected under copyright law, the parties will come to an agreement regarding the registration and exploitation of such results. Such agreement must reasonably consider the contributions of the parties to the development of the results. The Customer acquires, however, at a minimum a non-exclusive, royalty-free exploitation right unrestricted in terms of territory, time and content to the subject of the intellectual property right.

(3) The supplier guarantees that the Customer's or its customers global use of the supplier's products or services according to this agreement does not conflict with any intellectual property rights of any third party. The supplier will indemnify the Customer from and against

all claims brought against the Customer based on intellectual property right infringements. The supplier will compensate the Customer for all expenses and costs the Customer incurs in connection with the defense against such claims.

## **15. Secrecy / Data Protection**

(1) The supplier will treat confidential information, in particular documents, samples, planned business transactions, personal data, technical issues, data, as well as solutions to technical issues and other know how (hereinafter collectively referred to as "Information"), during the term and after the termination of this agreement confidential, in particular, the supplier will not disclose such Information to any third party or use such Information in an unauthorized manner for its own business purposes. The supplier will bind its employees to comply with this obligation.

(2) This duty to observe secrecy does not apply to information that

- was known to the other party independent of this agreement;
- was lawfully acquired from a third party;
- is or becomes commonly known to the public or state of technology;
- the information providing party to this agreement has released for publication.

(3) After the termination of this agreement, the supplier is obligated to return all documents and Information required to be kept secret without being asked or to destroy such documents and Information at the Customer's request and to provide the Customer with documentation of the destruction. The supplier is obligated to promptly remove any software provided by the Customer for its internal use, as well as any presentation versions without being asked.

(4) Should the supplier violate its duty to observe secrecy, the supplier is obligated to pay the Customer a reasonable contractual penalty of EUR 2,000 at a minimum for each violation.

(5) The supplier complies with the rules and regulations of the German data protection laws, in particular, if the supplier is granted access to the Customer's premises or to the Customer's hardware and software systems. The supplier ensures that its vicarious agents comply with these provisions, in particular, the supplier binds its vicarious agents to comply with data secrecy provisions prior to their assignment.

## **16. Spare Parts**

(1) The supplier warrants to the Customer and its customers the supply of replacements or spare parts for products under this agreement for a period of at least twelve (12) years after the products' delivery at reasonable terms.

## **17. Tools, Materials**

(1) Materials, equipment or tools provided by the Customer for the manufacture of the products under this agreement remain the Customer's property. In the event the supplier performs procurement or manufacture of such materials, equipment or tools on the Customer's behalf, the Customer acquires ownership to such materials, equipment or tools upon payment of the agreed price.

(2) The supplier is responsible for proper maintenance and insurance of these materials, equipment or tools. The expenses for such maintenance and insurance are included in the agreed product price, unless agreed otherwise between the parties.

(3) The Customer may demand return of its property at any time. The supplier waives any retention rights the supplier may have regarding these materials, equipment or tools.

(4) The supplier may not use such materials, equipment or tools for orders from other customers.

## **18. Proof of Origin**

(1) The supplier is obligated to provide the Customer with the required documentation on the goods origin at the Customer's demand. The supplier is liable for damages according to the statutory provisions regarding the accuracy and verifiability of such documentation through the competent authorities.

## **19. Acceptance**

(1) In the case of contracted works or services, in particular installation services, the provisions of Section 640 German Civil Code [BGB] exclusively apply to acceptance.

## **20. Export Licenses**

(1) The supplier is responsible for ensuring that the products under this agreement are eligible for export to the agreed or known countries of destination, provided the products are processed or used according to the intended purpose. In the event obstacles to the export of the products arise, in spite of the products' eligibility, based on official decisions and/or national or international regulations, in particular due to export control laws and regulations, as well as embargoes or other sanctions that apply to the supplier's products under this agreement, the supplier is obligated to support the Customer reasonably and as quickly as possible in obtaining the required export license. Should the obstacle to the export of the products continue to exist for a period of more than six (6) months, the Customer may exercise an extraordinary right to withdrawal regarding the affected parts.

## **21. Final Provisions**

(1) Place of performance and place of jurisdiction is the seat of the Supplier in Biedenkopf. The Supplier may also take legal action at the customer's general place of jurisdiction.

(2) All legal relationships between the customer and the Supplier are governed by the laws of the Federal Republic of Germany, without regard to principles of conflicts of laws and excluding any application of the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 (CISG, Vienna UN Sales Convention).