



## **I. Sales and Delivery Terms and Conditions of VBS Fügechnik AG (hereinafter referred to as "Supplier")**

-Version: October 2014-

### **1. General**

(1) Our offers exclusively address businessmen, legal persons under public law or special funds under public law. The following terms and conditions apply to deliveries and services provided by us. Conflicting or deviating terms of purchase of the customer do not apply, unless the Supplier has expressly agreed in writing to such terms in an individual case. Should the Supplier deliver goods, render services or accept payments without express objection to such customer terms, this does not represent acceptance of deviating terms.

(2) These Ts&Cs also apply to all future deliveries of the Supplier to the customer.

(3) The Supplier's deliveries and services comply with German regulations and standards. The Supplier does not assume a guarantee for the compliance with applicable regulations and standards of other countries (compare Section 10).

(4) The Supplier is authorized to electronically store and process customer data within the scope of the German Federal Data Protection Act (in particular Section 28 German Federal Data Protection Act [BDSG]) to the extent required for the performance of business transactions.

### **2. Representations**

(1) The Supplier's offers are non-binding as regards price, quantity, delivery date and availability of goods. The Supplier is authorized to adjust its products and services with future effect at any time.

(2) The Supplier's order confirmation in text form is exclusively binding as regards order acceptance, scope of delivery and delivery date and time. In the event orders are placed via the Internet, the confirmation of the order receipt that is automatically sent does not represent the conclusion of an agreement.

### **3. Pricing, Payment Terms, Offset**

(1) The Supplier's prices apply according to the conditions of the Supplier's price list that is effective at the conclusion of the agreement, unless otherwise agreed between the parties. Prices apply "ex works" (EXW Incoterms 2010), i.e. plus freight, customs duties, ancillary import levies, insurance and VAT, as well as plus packaging. We invoice VAT according to

the statutory VAT rate applicable on the performance date. Expenses for assembly, installation and putting into operation of machinery and equipment is invoiced based on time and materials.

(2) The customer is obligated to pay the invoice amount to the Supplier within fourteen (14) days after the invoice date without deductions, unless otherwise agreed between the parties. The customer is in default according to Section 286 Para. 2 No. 2 German Civil Code [BGB] after the expiry of the payment term.

(3) If the date for the delivery of goods or performance of services is later than three (3) months after the conclusion of the agreement, the Supplier is authorized to adjust the prices for goods or services upon timely notification of the customer prior to the performance of services or delivery of goods, as it is required based on general market price movements, which are beyond the Supplier's sphere of control (such as currency fluctuations, currency regulations, (1) customs tariff changes, significant increase of cost of materials or production costs) or based on an exchange of suppliers. In the case deliveries or services are to be provided within a period of three (3) months, the price agreed at the conclusion of the agreement applies in any case. In the case of agreed prices within the scope of framework agreements, the three (3) month period commences at the conclusion of the framework agreement.

(4) The Supplier may demand down or advance payments, if the customer places its first order with the Supplier, the customer has its seat outside of Germany or delivery outside of Germany is requested or if facts or circumstances exist that give rise to the assumption that timely payment or payment in full is questionable. In the event one of the aforementioned facts or circumstances arises after the conclusion of the agreement, the Supplier is authorized to revoke the agreed payment terms and demand immediate payment.

(5) The customer may only offset against uncontested counterclaims or counterclaims recognized by declaratory judgment, as well as against counterclaims arising from the same agreement. The customer is only entitled to retention rights that are based on the same legal transaction.

#### **4. Time of Performance**

(1) Start of and compliance with the time of performance as indicated by the Supplier requires that all technical issues are clarified and that the customer properly fulfills all of its obligations.

(2) In the event the Supplier is responsible for not meeting a delivery date, the customer is obligated to set a reasonable grace period for subsequent performance in writing for the Supplier. This grace period is at least two (2) weeks. In the event delivery of goods or provision of services is not performed after the expiry of the grace period and the customer intends to withdraw from the agreement or to demand damages instead of performance, the customer is obligated to provide the Supplier with advance notice of such intent in writing. The advance notice must include the express demand for delivery of goods or provision of

services in connection with an additional reasonable grace period. At the Supplier's demand, the customer is obligated to notify the Supplier within a reasonable period, if, due to the delay, the customer withdraws from the agreement and/or demands damages instead of performance or if the customer continues to demand delivery of goods or provision of services.

(3) In the event the agreed performance date is delayed for circumstances the Supplier is not responsible for because the Supplier did not receive timely or proper supplies in spite of proper and adequate ordering of supplies, the Supplier's performance date is reasonably extended. If the Supplier has properly notified the customer of the impediment to performance and such impediment to performance is not only temporary in nature, the Supplier may withdraw from the respective part of the agreement in whole or in part that has not yet been performed.

(4) In the event the customer is in default of acceptance, the Supplier may charge the customer a storage fee at a rate of 0.5% of the invoice amount for each month or part thereof. The storage fee may not exceed a maximum of 10% of the invoice amount. The Supplier's right to claim additional damages remains unaffected. The aforementioned provision applies as of the initially agreed performance date, if goods shipment is delayed at the express demand of the customer.

## **5. Shipment and Passing of Risk**

(1) The Supplier's shipments are "ex works" (EXW Incoterms 2010). The risk associated with the destruction of goods, loss or damage passes to the customer upon loading at the Supplier's warehouse or, if the goods cannot or should not be shipped, upon the customer's notification that the goods are available for shipment i.e. pick-up. The same applies also in the case of partial deliveries or if the Supplier has assumed other services, such as transportation costs or on-site delivery and installation.

(2) The Supplier delivers goods packed, if packaging is customary. In general, the Supplier provides packaging and protection of the goods and/or means of transportation for the goods at the customer's expense. Return of packaging, as well as protection or transportation tools and utilities is excluded, unless required by law or agreed otherwise in writing.

(3) Partial performance and associated invoicing is permitted, unless partial performance and associated invoicing is unreasonable to the customer.

## **6. Force Majeure**

(1) The Supplier's obligations to deliver are suspended in the event of force majeure; the Supplier is entitled to withdraw from the agreement should the circumstances and facts as of the conclusion of the agreement deteriorate in a material manner. The same applies in the event of energy or raw materials shortages, labor disputes, official decrees or traffic interruptions or interruption of operations. If upstream suppliers are not able to provide

timely or proper deliveries for the aforementioned reasons, Section 4 Para 3 applies accordingly.

## **7. Reservation of Title**

(1) Sold goods remain the Supplier's property until any and all claims from the business relationship are fulfilled ("Goods subject to Reservation of Title").

(2) If the customer works on or processes Goods subject to Reservation of Title, the Supplier's reservation of title extends to the new object as a whole. In the event the customer processes, combines or mixes the Supplier's goods with other goods, the Supplier acquires co-ownership to the new object (thing) proportionate to the ratio between the invoice amount of the Supplier's goods and the other objects used by the customer as of the point in time of the processing, combination or mixture.

(3) In addition, in the event Goods subject to Reservation of Title become a (subordinated) component of another object [Hauptsache] of the customer or a third party, the customer hereby assigns its rights to the new object. If the customer combines or mixes Goods subject to Reservation of Title in return for payment with another object [Hauptsache] of a third party, the customer hereby assigns to the Supplier its claim to remuneration against such third party.

(4) The customer may resell Goods subject to Reservation of Title within the ordinary course of business. Should the customer resell such goods without receiving the full purchase price in advance or simultaneously against delivery of the purchased goods, the customer is obligated to stipulate reservation of title according to these terms and conditions in the purchase agreement with the purchaser of such goods. The customer hereby assigns to the Supplier its claims arising from such resale, as well as any rights arising from the agreed reservation of title. At the Supplier's request, the customer is obligated to inform the respective purchaser of this assignment and to provide the Supplier with the information and documents required for the Supplier to assert its claims against the purchaser of such goods. The customer is authorized to collect claims arising from the resale in spite of the assignment, provided the customer properly meets its payment obligations to the Supplier.

(5) Should the value of the securities provided by the customer to the Supplier exceed the Supplier's claims by more than ten percent (10%), the Supplier is obligated to release securities at the Supplier's option.

## **8. Customer Rights in the Case of Defects**

(1) The Supplier only warrants compliance of its delivered products and provided services with applicable German regulations and standards. In the event products are used outside of Germany, the customer undertakes to examine the products' compliance with applicable laws and standards of the respective country and to adapt the products accordingly, if required.

(2) The customer may not assert any rights or claims based on defects of our deliveries, if the value or the suitability of the delivery or service is only insignificantly reduced or impaired.

(3) Should the delivery or service be defective and the customer has met its inspection and notification of defect obligations according to Section 377 German Civil Code [BGB], the Supplier will, at its option, provide additional delivery or remedy (subsequent performance). For this purpose, the customer is obligated to grant the Supplier a reasonable period of at least fifteen (15) work days.

(4) Place of performance for subsequent performance is the initial delivery location. The customer may demand reimbursement of expenses required for subsequent performance, provided these expenses are not increased, because the delivery object has been relocated after delivery, unless the relocation is in accordance with the intended use.

(5) In the event subsequent performance fails, the customer may reduce the purchase price or withdraw from the agreement. The customer is, however, only entitled to withdraw from the agreement, if the customer grants the Supplier a reasonable additional grace period and expressly threatens in writing to withdraw from the agreement

(6) The customer's right to recourse against the Supplier according to Section 478 German Civil Code [BGB] applies only to claims of defects covered by the law i.e. claims of defects agreed between the customer and the purchaser of the goods that exceed the statutory claims of defects are not covered.

## **9. Liability for Damages**

(1) The Supplier is liable for contractual and non-contractual obligations according to the applicable relevant statutory provisions, unless provided otherwise in these Ts & Cs (including the following conditions).

(2) The Supplier is liable for intent and gross negligence without limitation, based on any legal grounds whatsoever.

(3) In addition the Supplier is liable for simple negligence as follows:

a) without limitation for injuries to life, body or health;

b) for damages arising from the violation of a material contractual obligation; the liability is limited to foreseeable typical damages; material contractual obligations are obligations, whose fulfillment is essential to the agreement and upon which the customer can rely;

c) in all other events, the Supplier is not liable for damages that do not affect the goods themselves, in particular, the Supplier is not liable for lost profits or other financial losses of the customer.

(4) To the extent the Supplier's contractual liability is excluded or limited, this also applies to the personal liability of employees, representatives and vicarious agents.

(5) The above limitation of liability does not apply, if and to the extent the Supplier has assumed a guarantee for the quality of the goods. The same applies to claims of the customer arising from the German Product Liability Act [Produkthaftungsgesetz].

(6) The customer may only withdraw from or terminate the agreement for a violation of an obligation that is not based on a defect, if the Supplier is responsible for the violation. Withdrawal or termination requires the written form to be effective. E-mail or Fax does not satisfy this written form requirement. Otherwise, the statutory requirements and legal consequences apply.

(7) Assignment of the customer's claims according to Sections 8. and 9. is excluded. Section 354 a German Commercial Code [HGB] remains unaffected.

## **10. Limitation Period**

(1) The limitation period for claims according to Sections 8 and 9 is one (1) year. This provision does not apply in the cases of Section 9 Para. 2 and 5 (Liability in the case of intent, gross negligence, personal injury and based on the German Product Liability Act) and if longer limitation periods are required by law according to Section 438 Para. 1 No. 2 German Civil Code (Constructions and associated components and materials) Section 479 Para 1 German Civil Code (Right of Recourse) and Section 634a Para. 1 No. 2 German Civil Code (Construction Defects) and in any other case longer limitation periods are required by law.

## **11. Industrial Property Rights, Copyrights**

(1) In general, the performance of deliveries or the provision of services does not transfer any exploitation or usage rights associated with the Supplier's industrial property rights or copyrights in any case. Any such transfer requires a separate agreement between the parties.

(2) Damage claims of the customer are subject to Section 8 and 9. Damage claims of the customer are excluded to the extent the customer is responsible for the infringement of intellectual property rights, in particular, if the infringement is caused by an application of the goods or service the Supplier could not foresee or by an adaptation of the goods or service performed by the customer or the infringement is caused by the customer using the goods or service jointly with third party products.

(3) In the case of the infringement of intellectual property rights, the Supplier may, at its option, procure the required intellectual property rights within a reasonable period or deliver to the customer an alternate solution that does not infringe upon any intellectual property rights.

## **12. Spare Parts Supply**

(1) To the extent the Supplier is obligated to supply spare parts, this obligation does not include the delivery of original spare parts after the expiry of the warranty period. Furthermore, the Supplier is authorized to deliver spare parts with the same functionality to the customer or inform the customer of another source of supply.

## **13. 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).

## **II. Specific Provisions for Installation Services and Contract Work Services**

The following provisions apply to Installation Services and Contract Work Services:

### **1. Performance of Installation Services**

(1) Installation sites must be freely accessible for the contracted installation work. Additional costs are invoiced to the customer, if installation sites are not freely accessible.

(2) The customer is obligated to assume all costs for earthworks, construction works and other non-industry specific ancillary works, including required specialists and helpers, construction materials and tools, equipment and materials such as scaffolds, hoisting equipment and other devices required for the installation and putting into operation, fuels and lubricants, as well as power supply and water at the installation site, including connections, heating and lighting and to provide the above works, materials and services in a timely manner.

(3) At the installation site, the customer is responsible to ensure safekeeping of machine parts, apparatuses, materials, tools etc. The customer is obligated to provide suitable and dry rooms with sufficient storage space that can be locked. In addition, the customer is obligated to provide reasonable work and break rooms, including reasonable sanitation. Otherwise, the customer is obligated to protect and treat the Supplier's installation team in the best possible manner.

(4) Protective gear and protective equipment, which are required due to special circumstances at the installation site, are to be provided by the customer.

(5) Prior to the installation work start, the customer is obligated to provide the required information on hidden power, gas and water lines and pipes and similar installations, as well as required information on the structure without being asked.

(6) Prior to the start of the assembly or installation, the required materials, installations, equipment and objects to be provided by the customer must be available at the assembly or installation site and all preparatory work must have progressed such that the assembly or installation can start as agreed between the parties and that the work can be performed without interruption. Access routes and the assembly or installation site must be level and clean.

(7) In the event assembly, installation or acceptance is delayed for circumstances the Supplier is not responsible for, the customer is obligated to bear the costs for waiting time and additional travel of the Supplier's personnel or installation team to a reasonable extent.

(8) The customer is obligated to confirm the installation team's working hours on a weekly basis to the Supplier, as well as the completion of the assembly, installation or putting into operation.

(9) Additional required material or working time that was not foreseeable at the conclusion of the agreement is invoiced separately, unless agreed otherwise between the parties.

(10) The Supplier is authorized to use sub-contractors.

## **2. Acceptance of Contract Works**

(1) If the acceptance of the provided services is agreed within the scope of contract works, the Supplier may demand acceptance of the provided services after completion - if applicable, also prior to the expiry of the agreed completion period. In this case, the customer is obligated to perform the acceptance within ten (10) working days; the parties may agree on another period. At the Supplier's request, completed portions of the contracted work are to be accepted separately. The customer may only refuse acceptance for material defects up to the point in time these defects are remedied.

(2) If acceptance is not required, the performed services are deemed accepted ten (10) working days after the Supplier's written notification of the customer that the services are completed. If acceptance is not required and the customer uses the work or service or a part thereof, acceptance is deemed provided five (5) working days after the first use of the work or service, unless agreed otherwise between the parties. Use of portions of the physical structure for the continuation of the works is not considered acceptance.

(3) The customer is obligated to give notice of reservations for known defects or contractual penalties at the latest on the dates indicated in Paragraphs 1 and 2.

(4) The risk passes to the customer upon acceptance, unless the customer already bears the risk according to Section 5 Para. 1.

## **3. Start of the Period of Limitation in the Case of Contract Works**

(1) If acceptance is agreed, the period of limitation for claims for defects based on contract works, as well as claims arising from the Supplier's liability for damages starts on the acceptance date of the work or service. In the case of works or services that can be accepted independently, the period of limitation regarding such partial works or services starts with their acceptance.