

General Sales and Delivery Terms and Conditions

Vogelsang GmbH & Co. KG (Effective July 1, 2017)

1. Applicability of General Terms and Conditions

The following conditions apply to sales contracts between Vogelsang GmbH & Co. KG, hereinafter "Manufacturer", and the party ordering the goods, hereinafter "Customer. Customers in the sense of these Terms are business entities, not consumers. We object to any purchasing conditions of the Customer, unless we have expressly agreed upon these in writing.

2. Offers, Conclusion of Sales Contracts

Offers made by the Manufacturer may be amended or withdrawn at any time prior to their acceptance. A contract is concluded by a written or oral order of the Customer and a written order confirmation of the Manufacturer. Content and scope of the Manufacturer's obligations are determined by the written order confirmation of the Manufacturer. The Manufacturer's order confirmation shall be deemed accepted by the Customer unless it has objected promptly upon receipt.

3. Manufacturer's Technical Specifications

Dimensional and weight specifications, data, diagrams and drawings are approximate only except if and to the extent the Manufacturer has confirmed in writing that a specification is binding. We reserve the right to make technical and design changes with respect to data and descriptions obtained in brochures, catalogues and written documentation, including model, design and material changes resulting from technological advances, and any such change shall not give rise to any claims of the Customer.

4. Rights to Plans and Drawings

The Manufacturer retains all property rights and intellectual property rights to all drawings, documentation etc. They must be returned if requested. They may not be provided to third parties without the express written permission from the Manufacturer.

5. Prices, Additional Costs, Money Transactions

All prices are ex-works, plus legally applicable value added tax, or other taxes. Incidental costs such as costs for packaging, freight, insurance, customs, export and import taxes, surcharges and fees, licenses and certifications shall be borne by the Customer. The same applies for costs arising from the transfer of money relating to the payment of the Manufacturer's invoices. In the event the Manufacturer accepts cheques or similar instruments, the Customer shall bear incurred interest, discounting fees and all other bank costs. We assume no liability for timely protest of cheques.

6. Payment Terms, Default

Payment due dates must be complied with irrespective of whether shipping, installation, start-up or Customer acceptance are delayed or become impossible for reasons outside the Manufacturer's control. Should the Customer fail to pay by the payment due date, late payment interest in the amount of 8% above the applicable base rate will be applied if the Customer is an entrepreneur. In all other cases, the Customer will be charged with late payment interest in the amount of 5% above the applicable basis rate. In the event of late payment all discounts and benefits shall become null and void, the relevant amounts shall be invoiced.

7. Set-off, Withholding

The Customer may set off a counter claim only in the event such counter claim is incontestable or finally confirmed by a court without further recourse. Customer may not withhold payments on grounds unrelated to the contract.

8. Delivery Times, Force Majeure

The date of delivery shall be the date stated in the order confirmation plus 10 days allowance for delivery delay. The delivery shall be deemed to be timely if the Customer is notified in time that the goods are at its disposal, or if the product has left Manufacturer's works. The delivery date is postponed by the amount of time needed by the Customer to provide required documentation, particularly any needed authorizations, approvals, import licenses, import authorizations, prompt and timely clarification and approval of plans and drawings needed for the manufacture or delivery of the product, or the provision of agreed security. War, strikes, lockouts, raw material and energy shortages, plant and transport disruptions, restraints from rulers, and all other cases of force majeure - also including the extent and time they make the business unprofitable - exempts the Manufacturer from its obligation to manufacture and deliver for the period of the disruption and its consequences. This also applies for delayed, inadequate and insufficient performances from the Manufacturer's suppliers. The above exemptions apply regardless of whether there is an existing delivery default. If such events persist for a period of more than 4 weeks, the Manufacturer may completely or partially withdraw from the affected delivery obligation and the Customer shall in this case have no claim for damages. The Customer may cancel the purchase contract on the grounds of delivery or manufacturing default only after it has granted an appropriate delayed delivery period of at least four weeks and has notified the Manufacturer of its intention to cancel the contract if the delayed delivery period has expired unsuccessfully.

9. Passing of Risk, Shipping Rules, Partial Deliveries

The risk of loss or damage passes to the Customer at the latest when the goods are dispatched from the Manufacturer's premises. This applies as well in the event of partial delivery, or if the Manufacturer is still due to perform other obligations such as shipping or installation.

Any special requests and requirements regarding transport must be submitted to the Manufacturer in time, at the latest 10 days before the delivery date. Complaints regarding shipping issues must be raised to the last freight carrier promptly upon receipt of the goods or shipping documents. Providing insurance against damage of any type is the sole responsibility of the Customer. Upon request of the Customer, the Manufacturer shall, at the Customer's expense, arrange for the insurance of the goods against theft, breakage, damage arising from transport, fire and water, as well as other insurable risks. In the event the shipment is delayed due to reasons falling into the responsibility of the Customer, all risks pass to the Customer on the day on which the goods were ready for shipment to the Customer.

If requested by the Customer, the Manufacturer is obligated to procure, at Customer's expense, the insurances requested by the Customer.

The Manufacturer may arrange for and invoice partial deliveries. The Customer must accept the delivery of goods even if these goods have insignificant defects.

10. Retention of Property Rights

The Manufacturer reserves all title and ownership to delivered goods until all payments arising from the business relationship with the Customer have been made in full. For the period of time during which the Manufacturer has retained its title and ownership in the delivered goods, he may insure the delivered goods at the expense of the Customer against theft, damage from fire, water, breakage and other risks, except if the Customer has provided proof of its own insurance. In the event of a payment default of the Customer, the Manufacturer may a the Customer's expense demand the prompt preliminary return of the unpaid subject goods to the Manufacturer; such demand shall not be deemed a rescission of the purchase contract. The Customer is obligated to co-operate in connection with measures required to protect the property of the Manufacturer, and to inform the Manufacturer of any special legal requirements. Any goods remaining in the retained ownership of the Manufacturer may be sold by the Customer in the orderly course of business provided that the retention of the Manufacturer's ownership is maintained until all Customer debt to the Manufacturer has been paid in full. The Customer may neither pledge nor transfer for security purposes any goods under the retained ownership of the Manufacturer. The Customer is obligated to immediately notify the Manufacturer in the event of property seizure or other interferences with the Manufacturer's retained ownership.

11. Inspection and Defect Notification Obligations, Consequences of Defects, Liability Limitations

The Customer is required to carefully inspect the goods at the time of receipt and to immediately report to the Manufacturer in writing any detected defects. Hidden defects must be reported in writing immediately after their discovery. In any event, all complaints relating to defects must be notified in writing to the Manufacturer before the relevant goods are processed, used, sold or installed, and the Customer shall follow the instructions of the Manufacturer. The warranty period is one year from delivery of the goods.

Should the Customer require the Manufacturer to participate in a hand-over inspection, it must submit such request in writing. In case of such request, the hand-over inspection is carried out after complete delivery of the goods. Hand-over inspections shall be performed only for formal acceptance purposes. The hand-over and acceptance shall be recorded in a written report. In the event the Customer is in default regarding an agreed hand-over and acceptance inspection, all costs arising from such default shall be borne by the Customer. Should the Customer's hand-over and acceptance default persist, the Manufacturer may rescind the contract completely or partially, and demand compensatory damages for non-fulfilment of the entire contract, or parts thereof, provided it has notified the Customer in advance of a final hand-over and acceptance deadline to expire two weeks from receipt of the notice. The Manufacturer is not required to notify its intention to refuse further performance. The rights under § 373 of the German Commercial Code shall apply.

Defects which do not, or only insignificantly, impair the value of the goods or their fitness for the intended use (as recognizable by the Manufacturer) shall not give rise to claims of the Customer. If a defect is detected at the time of transfer of risk, the Manufacturer is entitled and obligated to arrange for the subsequent fulfilment of its obligations. At the choice of the Manufacturer, the subsequent fulfilment of obligations shall be repair or delivery of a replacement. The Manufacturer shall bear the cost of subsequent fulfilment, especially for transport, labour and materials, except any cost resulting from the removal of the relevant product to a location other than the place of delivery. In the event the cost of subsequent fulfilment is higher than an amount equal to 50% of the value of the defective product, the Manufacturer may refuse subsequent fulfilment. If subsequent fulfilment fails or if it is not performed, or rejected to be performed, within an adequate deadline notified by the Customer, the Customer may withdraw from the contract, or deduct an appropriate amount from the purchase price, or request - within the limits of the following liability limitations - damages in lieu of performance. If a defect, or other failure to fulfil a performance obligation results in a damage, the Manufacturer's liability shall be governed by applicable statutory law if and to the extent the damage represents a personal injury or is subject to an applicable product liability law, or is the result of intent or gross negligence.

In the event the damage results from a negligent violation of a cardinal contract obligation, the Manufacturer is liable only for damage that is typically connected with the sale of the product. Other claims and tort claims of the Customer are excluded. In particular, the Manufacturer is not liable for damage that has not occurred on the purchased product itself, nor for lost profit or other property damage of the Customer, except where a damage was caused by the Manufacturer, or its employees, by intent or gross negligence. In the event of a breach of a pre-contractual obligation or if a performance obstacle existed already when the contract was concluded, the liability is limited to the negative interest of the Customer (Customer may ask to be treated as if he had never entered the purchase relationship).

12. Applicable Law, Final Conditions

The Law of the Federal Republic of Germany governs the contract. The court of jurisdiction for all disputes arising from this contractual relationship is the location of the Manufacturer - D-49632 Essen, Germany. In the event single rules or clauses of these terms and conditions are or should become invalid, then the remaining conditions shall remain in full effect. The parties of the contract will then execute the contract by using an effective clause that is closest to the economic purpose intended by the void clause. In order to be legally effective, any rules and conditions which deviate from these General Terms and Conditions must be expressly agreed upon in writing. Changes to the written form requirement must be in writing.