Terms of Sale and Delivery

VETTER Krantechnik GmbH

valid from 01.01.2018

VETTER® Krantechnik

I. Conclusion of contract and contents

1. These Terms and Conditions below are exclusively the basis of all offers and contracts towards companies. We shall not recognise contradictory regulations of the orderer or regulations which deviate from our Terms and Conditions printed below, even if we have not contradicted these in an individual case, unless we explicitly confirm these in writing.

2. Our offers are principally without obligation. All agreements require our written confirmation in order to be valid respectively will become binding with the commencement of the order execution. All declarations, which are aimed at the conclusion, amendment to or termination of contracts, are to be recorded in writing. If the order deviates from our offer, the orderer will especially emphasises these deviations as such with the order. These are only binding for us if they are confirmed by us in writing.

   Insofar as the orderer places the order for the contractual product by electronic means, the contractual text will be stored by us and will be sent to the orderer upon request together with these General Business Terms and Conditions [German abbreviation: AGB9.

3. With an order value of less than EUR 65.00 (net) a minimum quantity surcharge will be due.

4. The condition of the contractual product is exclusively oriented to the agreed technical delivery regulations. Decisive for the condition of the contractual product as per contract is the time when the risk is passed. Permits, tests and (static) calculations which may be necessary for the execution and the operation of the object of delivery are – if not otherwise explicitly agreed – to be obtained by and at the costs of the orderer.

5. Details in brochures, drawings, catalogues or other sales documents, including the eight and measurement details listed therein, are non-binding, insofar as they are not explicitly marked as binding and only serve as approximate values that are customary for the industry. If, after the submission of the offer, non-essential changes are made to the products over the course of the constant further technical development, we may supply the technically changed design. We are entitled to deviations in diagrams, drawings, descriptions, colours, measurement, weight, quality and other details if they are deemed reasonable for the orderer by taking the mutual interests into consid3eration.

6. We reserve the property rights and copyrights to offers, cost estimates, samples, models, brochures, calculations, drawings and other documents as well as to moulds, manufactured devices and tools, etc. They may only be used for the agreed purpose, may not be made accessible to third parties, reproduced or announced. The orderer will be liable for all direct or indirect damages suffered by the non-compliance with this stipulation.

II. Prices and payment

1. Our prices shall be deemed, if not otherwise agreed, ex works (including loading) plus the respective valid value added tax, however without packaging, freight costs, insurance and customs duties as well as other possible fees. These will, if applicable, be charged separately.

2. Insofar as our delivery is carried out as per contract or, however, at the orderer's request later than four months after the placement of the order, we are entitled to make a price adjustment to price bases that have changed during this period of time (e.g. raw materials, wages) for prices that are valid on the day of delivery.

3. The prerequisite for the validity of the agreed prices is that the positions upon which the agreement is based remain unchanged and can be provided without impediments for which the orderer is responsible (e.g. imprecise or incorrect documents made available by the orderer, incomplete or late self-delivery). Subsequent extensions and changes, which lead to additional work, have to be remunerated additionally by the orderer. Contracts without a price agreement will be charged according to the respective valid price list.

4. Our invoices are due and payable immediately, unless deviating terms of payment have been agreed with the orderer in writing.

5. Cash discount is principally not granted.
   Insofar as cash discount promises are agreed in an individual case, these must be shown in the written order confirmation of VETTER and shall only apply under the condition of the timely and full payment of all claims of VETTER against the orderer that are due at the time of payment.

6. Cheques and bills of exchange will not be accepted.

7. Insofar as not explicitly agreed the prices will neither include administration or bank fees, nor other comparable duties, taxes or fees that are, if applicable, to be paid in the country of receipt.

   Should we be required to pay such a duty or fee then the amount of this duty or fee will be added to the invoice as a separate item respectively subsequently accordingly charged separately.

   After the expiry of the agreed payment deadline or deadline stated in the order confirmation we are entitled, without a further reminder, to request interest in the amount of the statutory interest rate on default (Section 288 BGB). The right to prove higher damages due to default shall remain explicitly reserved.

8. The orderer is not entitled to offset against other counter-claims than those which are undisputed or have been determined final and binding. The orderer is only entitled to rights of retention insofar as they stem from the same contractual relationship.

9. In case of a substantial deterioration in the order's asset circumstances after the conclusion of the contract we are entitled pursuant to Section 321 BGB [German Civil Code] to only provide our deliveries and services against advance payment or against cash on delivery or to render these dependent on the provision of security. Claims existing for already provided services are in this case – despite a deferral – due and payable immediately. This shall in particular apply if further payments are not made in case of a default of payment despite a reasonable deadline. If the orderer does not satisfy our request to provide security, within a reasonable deadline set to him, we are entitled to cancel the contract and to request damages.

III. Delivery

1. The delivery deadlines sated in the offers or order confirmations are only to be seen as empirical values. The prerequisite for the start and the adherence to the delivery times stated by us, besides the timely receipt of an agreed advance payment, is the clarification of all technical questions insofar as the timely receipt of all services to be provided by the orderer (material provisions, permits, releases, plans and other documents). A delivery date or a delivery deadline is only binding if this is described as such in the order confirmation of VETTER. The place of performance for all services, which are to be provided for us by the orderer in order to carry out the work, is our production plant in 35708 Haiger.

2. In case of subsequent changes to the order the originally stated delivery time shall also be deemed invalid in case of agreed delivery deadlines. A new delivery date will be stated by us upon request.

3. In the cases, in which it is not possible for us to deliver the goods on time due to events for which we are not responsible the delivery time will be extended by a reasonable period of time. This shall also apply in the cases such as e.g. of war, riot, industrial dispute, shortage of energy, restriction to work, failure of traffic and transport means, incorrect or late delivery by sub-suppliers and official interventions.
   In the aforementioned cases we are entitled, after prior written announcement, to fully or partly release ourselves from the delivery obligation.
   If the orderer proves that the subsequent fulfilment is of no interest for him as a result of a serious delay, he can cancel the contract in these cases, after the unsuccessful setting of a reasonable final deadline under the exclusion of further claims.

4. Should an agreed delivery date be exceeded for reasons, for which we are responsible, the orderer has to grant us a reasonable deadline for the subsequent delivery in writing. Only after the unsuccessful expiry of this final deadline is he entitled to cancel the contract.

5. We are entitled to make partial deliveries and accordingly also to partial invoices.

IV. Shipment

All deliveries of our company shall be carried out „ex works" (EXW Incoterms 2010). Accordingly, the risk for deterioration, loss or damage to the goods shall pass to the orderer when the delivery is hand over to the carrier or freight forwarder in our warehouse.

We reserve the right to choose the despatch route and the type of shipment in the absence of a written agreement to the contrary with the orderer. At the orderer's request, at his costs, the shipment will be insured by us against theft, breakage, transport, fire and water damages as well as against other insurable risks.

In case of damages in transit the orderer has to arrange for a recording of the facts at the responsible bodies without delay.

If the shipment or the acceptance of the object of delivery is delayed for reasons for which the orderer is responsible, we may charge him the costs incurred due to the delay, beginning 14 days after the report of the shipment respectively the readiness for acceptance, at least however 3.5% of the invoice amount for each month. At the same time all of our deliveries and services provided until this time will be due and payable.
We shall reserve the right to prove higher damages. We are moreover entitled, after the setting and unsuccessful expiry of a reasonable deadline to dispose otherwise over the object of delivery and to supply the orderer with a reasonable extended deadline.

V. Acceptance

Should the contractual product or any other service be formally accepted then we shall determine the place and time of the acceptance. The costs of the acceptance shall be borne by the orderer. If the orderer does not appear for the acceptance, we can set a deadline of 7 days for the formal acceptance with the reference that our delivery shall be deemed as accepted if the orderer does not appear for the acceptance within the 7-day deadline. After the 7th day our service shall subsequently be dee3med as accepted. Special regulations shall require our written confirmation.

VI. Claims due to defects

1. The compliance with the contract and the freedom of defects of our deliveries are exclusively assessed according to the explicit agreements. Liability for a certain intended use or a certain suitability will only be assumed by us if this is explicitly listed in writing in the agreements. In the other cases the risk of suitability and use lies exclusively with the orderer.

2. The contents of the contractual agreements with the orderer shall principally not establish any guarantee. The assumption of a guarantee shall require an explicit written agreement.

3. The orderer has to inspect our deliveries without delay after receipt and to report any defects determined hereby in writing without delay. Hidden material defects must be reported in writing without delay after they are discovered.
Insofar as an acceptance has been agreed the report of defects, which should have been determined during this acceptance, is excluded after the execution.

4. Should the orderer determine defects during the examination he has to give us the opportunity without delay to carry out an examination of the delivery for which a complaint was made. Upon request on our part, the delivery for which a complaint was made, is to be made available to us in full or in part, at our costs and according to our instructions. In case of unjustified complaints we reserve the right to encumber the orderer with freight and examination costs incurred hereby.

5. In case of a justified report of defects we will provide subsequent fulfilment, at our own choice, by a substitute delivery or subsequent improvement or new production. The orderer has to grant us a reasonable deadline, if this is not dispensable for statutory reasons. If we cannot satisfy the subsequent fulfilment within a reasonable deadline or if this fails, the orderer is entitled to request a reduction in the remuneration or to cancel the contract in case of a not only insignificant breach of obligations. If only parts of the delivery are faulty the further rights of the orderer shall only refer to the faulty part of the delivery, unless the partial delivery is of no interest for him. If our processing instructions are not complied with, the deliveries are mounted or put into operation deficiently by the orderer or third parties, changes made without coordination with us, parts exchanged or materials are used, which do not comply with the original parts, the orderer will not be entitled to any rights in case of defects. If the orderer carries out improper changes or repair work to the delivery himself or has this carried out by third parties there will be no claims due to defects for these and the thus ensuring consequences

6. Claims of the orderer for recourse against us according to Section 478 BGB owing to the entrepreneur's recourse in the event of a purchase of consumer goods shall only exist to the extent that the orderer has not reached any agreements with his buyer that go beyond the statutory claims.

7. Increased additional expenses owing to transport, labour and material costs incurred for the subsequent fulfilment are excluded, insofar as these are caused by the fact that the delivery has been subsequently taken to another location than the place of performance, unless the transport corresponds with the use as intended. This shall also apply in the event of claims for recourse.

8. Further claims of the orderer owing to defects are excluded and only capable of compensation within the scope of the liability according to Section VII.

9. The statute-of-limitations for claims due to material defects is 12 months if no longer deadlines are stipulated by law according to Sections 438 Para. 1 No. 2 BGB (Delivery of objects for building structures), 479 Para. 1 BGB (Claim for recourse in the event of a purchase of consumer goods) and 634 a Para. 1 Nr. 2 BGB (Construction defects). The legal statute-of-limitations will also continue to apply in cases of the injury to life, the body or the health, with wilful or grossly negligent breach of obligations and the malicious failure to disclose defects.

VII. General liability provisions

1. Insofar as a claim is asserted against us for compensation for damages or reimbursement of expenses, no matter for which legal grounds, in particular owing to breaches of obligations from the contractual obligation concluded with the orderer or from illicit act, we will only be liable as follows:
The liability of our company, our legal representatives or our vicarious agents is limited to wilful intent and gross negligence or if the breached obligation is of essential significance for the achievement of the contractual purpose (cardinal obligation).
Liability for slight negligence is excluded insofar as this does not concern a breach of obligations that are essential for the contract. For this case our liability for damages is, however limited to the foreseeable damages that are typical for the contract.

2. This exclusion of liability or the restrictions to liability shall not apply insofar as we bear mandatory liability according to the German Product Liability Act or for other reasons in the event of the injury to life, the body or the health or, however, for damages to privately used objects. A change in the burden of proof for the disadvantage of the orderer is not associated with this agreement.

3. In case of liability according to the above regulations this is limited in respective of the amount to those damages, which were foreseeable as a possible consequence of such a breach of contract upon conclusion of the contract or of which we were aware or should have been aware by taking all circumstances into consideration, by applying the customary care and attention for the trade.

4. For the event of liability for indirect damages and consequential damages as a result of a delivery of faulty goods our obligation for compensation shall only apply to those damages that are to be expected with a use of the object of delivery as intended.

5. The aforementioned regulations shall also apply to the same extent to our legal representatives, employees and vicarious agents.

6. Claims according to the German Product Liability Act and from a guarantee shall remain unaffected.

7. The claims shall become statute-barred within one year from the hand-over of the delivery to the orderer. The statutory regulations shall apply to claims for damages according to the German Product Liability Act.

VIII. Important information

1. **Cranes, lifting devices, load handling devices, etc. may only be used after qualified assembly, inspection before the first commissioning and regular recurring inspections. The use has to be carried out as intended according to the operating and maintenance instructions.**

2. **If the orderer or user makes changes, no matter of what kind, to the delivered products warranty, liability and guarantee shall lapse, unless the orderer provides the proof that a possible defect was not caused by this change.**

IX. Material provisions

Templates, raw materials and other objects that are intended for re-use such as semi-finished and finished products of the orderer will only be held in safekeeping by us after a prior agreement and against payment of a special remuneration. Our liability for these is oriented to Section VII.

We must only subject the semi-finished and finished products or other parts made available to us by the orderer to a prior inspection if this has been explicitly agreed with the orderer and the assumption of the costs has been regulated.

The orderer cannot derive any claims against us for material faults or for other indicated inability to use material provisions due to circumstances for which we are not responsible. He has to replace the corresponding parts free of charge and freight-free for us as well as take the faulty parts back free of charge and freight-free.

X. Reservation of title

1. We reserve the property to the contractual product until the full settlement of all claims from an ongoing business relationship, no matter due to which legal grounds they were established. In case of current account the reservation of title shall be deemed as a security for our respective balance claim. This shall also apply if payments are made by the orderer on certain claims.

2. In case of a conduct of the orderer in breach of the contract, in particular default of payment, we are entitled to take the reserved goods back and to access the plant at the orderer for this purpose. The orderer declares that he explicitly agreed herewith. We are also entitled to place ourselves in the possession of the object of purchase. The orderer explicitly agrees hereto so that this shall in particular not constitute a forbidden autonomy.

3. The orderer undertakes to treat the contractual product with due care and attention. If maintenance and inspection work are necessary the orderer has to carry this out regularly at his own costs.

4. The processing or conversion of the reserved goods shall always be carried out on our behalf as manufacturer, without this leading to a liability for us. In case of processing or conversion of the reserved goods with other products not delivered by us we shall be entitled to the co-ownership of the new object in the ratio of the value of the reserved goods to the value of the other processed or converted products at the time of the processing or conversion. For the event that our property to the reserved goods lapses by connection or mixing, the orderer shall hereby now already assign us his (co-) ownership rights to the new object or the mixed stocks in the scope of the invoice value of the reserved goods and shall hold these in safekeeping free of charge for us. The new object produced by processing, conversion, connection or mixing (hereinafter referred to as „new object") or the (co-)ownership rights to the new object to which we are entitled or which are to be assigned according to Subclause 2 of this Section shall serve in the same manner of the protection of our claim, as the reserved goods themselves according to Subclause 1 of this Section. Insofar as not otherwise derived from the following provision, it shall apply accordingly to the new object.

5. The orderer may only sell the reserved goods in proper business transactions at customary business conditions and only as long as he satisfies his payment obligations towards us punctually. The orderer undertakes, on this part, to only resell the reserved goods under the reservation of title and to ensure that the claim from such sales transactions can be assigned to us. The claim of the orderer from a resale of the reserved goods is hereby assigned to us now already. We accept the assignment. The claim shall serve to the same extent as our security as the reserved goods. If the orderer sells the reserved goods together with other products not delivered by us then the assignment of the claim shall only apply in the volume of the invoice amount, which is produced from the resale of our reserved goods. With the sale of the contractual product according to Subclause 2 of this Section or the statutory regulations concerning the connection and mixing of the object, which is co-owned by us, the assignment of the claims shall apply in the amount of our co-ownership share.

6. If the orderer includes claims from the resale of reserved goods in a current account relationship existing with his buyers then he hereby assigns a recognised balance or final balance produced for his benefit to us now already in the volume of the amount, which corresponds with total amount of the claim entered into the current account relationship from the resale of our reserved goods. The aforementioned paragraph shall apply accordingly.

7. The orderer is authorised to collect the claim from the resale of the reserved goods assigned to us. An assignment of the claim from the resale, also within the scope of a real factoring contract, is not permitted to the orderer.
   We can revoke the collection authorisation in case of default of payment, suspension of payments, transfer of the orderer's business operation to third parties, in case of impaired creditworthiness and trustworthiness or the dissolution of the orderer's company as well as in case of a breach by the orderer of his contractual obligations according to Subclause 3 of this Section at all times. For this event the orderer undertakes to inform his buyers of the assignment of claim to us without delay and to provide us all information and documents that are necessary for the collection. In addition, he is in this case obligated to hand over or assign possible collateral items, to which he is entitled for customer claims, to us.

8. If the realisable value of the collateral existing for us exceeds our secured claims by more than 15% we are willing, at the orderer's request, to accordingly release collateral items at our choice.

9. The orderer undertakes to inform us of an attachment or any other or actual impairment or danger to the reserved goods or the other collateral items existing for us without delay.

10. The orderer undertakes to sufficiently insured the reserved goods, in particular against fire, water, storm, stroke of lightning and theft. He hereby assigns his claims from the insurance contracts to us now already.

11. We are entitled, in case of conduct of the orderer that is in breach of the contract, in particular with default of payment or in case of a breach of an obligation of this Section, to cancel the contract and to request that the contractual product is handed over. For this event the orderer hereby declares now already his consent that we shall take or have taken the reserved goods located at the orderer or – insofar as we are the sole owners – the new object away within the meaning of Subclause 2 of this Section. In order execute these measures as well as for a general inspection of the reserved goods or the new object the orderer has to grant us or persons authorised by us access.

XI. Software use

Insofar as software is included in the scope of delivery the orderer shall be granted a non-exclusive right to use the delivered software including its documentation. It shall be handed over for the use on the object of delivery intended for this purpose. A use of the software on more than one system is forbidden.
The orderer may only reproduce, revise, translate the software in the scope as permitted by law (Section 69 a et seqq. UrhG [German Copyright Act]) or convert from the object code into the object code. The orderer undertakes not to remove manufacturer's information – in particular copyright notices – or to change these without our explicit prior consent.

All other rights to the software and the documentation including the copies shall remain with us or with the software supplier. It is not permitted to grant sub-licences.

XII. Export proof

In the cases, in which the object of contract is shipped as intended to a country outside of the Federal Republic of Germany, the orderer has to provide the export proof and export documents to us as required by tax law before or after the shipment without delay. As long as these documents and proof have not been provided by the orderer, the orderer has to pay for this delivery the value added tax applicable within the Federal Republic of Germany on the full invoice amount.

XIII. Export control

The orderer undertakes before we are commissioned and before all further delivery to comply with regard to the products delivered by us to him, all relevant export regulations and provisions, in particular of the EU and all EU member states.

Insofar as according to these provisions and regulations the granting of an export permit is necessary the orderer has to obtain this in his own name and at his own costs. In any case the orderer undertakes to ensure that our deliveries / services are not determined for nuclear or weapon-related use (including their carrier technologies), insofar as no effective export permit has not been granted by the export control authorities responsible in this respect for our deliveries / services for one of the aforementioned intended uses.
With each further delivery or resale of our deliveries / services the orderer undertakes to inform the recipients in writing about the compliance with the above regulations.

We explicitly inform the orderer that all of our deliveries / services are subject to the reservation that their fulfilment do not oppose any restrictions / bans owing to national, supranational or international regulations of the Foreign Trade Law as well as no other sanctions / embargos. In the cases, in which we become aware of circumstances after conclusion of the contract, from which it can be derived that the delivery / service is banned according to the national, supranational or international provisions applicable to our company, we are entitled to an immediate right to cancel the contract that can be exercised at all times. Claims for damages of the orderer are excluded in this case.

Should it be determined that our delivery / service is subject to an approval obligation by the export control authority that is responsible in this respect owing to its condition or its intended use, possible delays in delivery, resulting from the obtaining of such approval, shall be solely for the expense of the orderer. These shall neither entitle the orderer to rescind the contract, nor to claims for damages. The aforementioned shall also apply to the event that such an approval is not granted by the responsible export control authority.

XIV. Place of performance, place of jurisdiction, applicable law

The place of performance for both contractual partners is 57080 Siegen.

The place of jurisdiction for all differences in opinion from contracts with the orderer is 57072 Siegen if he is a merchant, legal entity under public law or a special fund under public law.

We are however entitled to also file action against the orderer at the court of his place of residence.

The law of the Federal Republic of Germany shall apply.
The validity of the UN Convention on Contracts for the International Sale of Goods is explicitly excluded.
The contractual language is German.

XV. Data protection clause

We are entitled, according to the provisions of the Federal Data Protection Act to collect and use personal data about the orderer, insofar as they are necessary for the business relationships or own marketing purposes. The data will only be forwarded with the consent of the orderer to third parties, unless they are subject to the statutory or official notification obligation.

We reserve the right in order to hedge the credit risk to transmit data for the purpose of a credit rating. The orderer may object to the use, processing and forwarding of his data at all times and revoke the consent. This can be carried out by a simple notification to use.

XVI. Severability clause

If a part of the contract is invalid for any reason, this shall have no effect on the validity of the remaining part of the contract. The parties undertake in this case to reach an agreement, which shall as far as possible correspond with the invalid provision.