

VIKING GmbH
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hereinafter referred to as "VIKING"

VIKING GmbH – Terms and Conditions of Purchase

1. Applicability, Additional Rules

1.1 These Terms and Conditions of Purchase shall apply to all transactions with the supplier, even if they are not mentioned in later contracts. They shall also apply if the supplier refers to its own terms and conditions, in particular upon acceptance of the order or in the order confirmation, unless VIKING expressly approved these terms and conditions.

1.2 Unless VIKING expressly confirms the supplier's derogating conditions, these shall be deemed rejected. The supplier's confirmation or execution of the order shall constitute an approval of these Terms and Conditions of Purchase.

1.3 VIKING'S Terms and Conditions of Delivery shall apply in addition to these Terms and Conditions of Purchase.

2. Supply Contract, Vendor Release

2.1 The supplier's offer shall be free of charge for VIKING. The offer shall expressly mention any derogation from our inquiry; relevant drawings shall be enclosed, if necessary.

2.2 An order shall be deemed placed only if communicated by VIKING in writing or, if orders are placed orally or by phone or telegraph, if properly confirmed in writing by VIKING. An order generated by automatic facilities which does not include a signature or a name shall also be deemed placed in writing as set out above. Orders shall not be binding for VIKING if they contain any obvious mistakes, typing or calculation errors.

2.3 The supplier shall send an order confirmation which expressly refers to the price and the date of delivery immediately, in any case not later than 2 weeks after receipt of the order. Any variation from the contents of the order and subsequent amendments of the contract shall be deemed agreed only if expressly confirmed by VIKING in writing.

2.4 The supplier need not confirm individual vendor releases for serial deliveries. Vendor releases shall be deemed accepted, unless the supplier immediately (within 5 working days) raises an objection by facsimile, using the VIKING vendor release form. Such vendor releases specifically refer to the obligation to deliver if objections are raised too late.

2.5 If VIKING becomes aware of facts which challenge the supplier's ability to perform the contract, VIKING may grant a reasonable grace period within which it may demand full performance by the supplier or provision of an adequate security before VIKING continues to fulfill its payment obligations and other obligations. After expiry of the grace period, VIKING may rescind the contract. Facts which challenge the supplier's ability to perform the contract include in particular sustainable pledges or other judicial execution measures and an application for the initiation of bankruptcy proceedings.

3. Delivery Dates and Periods, Default

3.1 The agreed delivery dates and/or periods shall be binding. Delivery periods shall commence on the date the order is placed. The goods must have been received at the place of receipt indicated by VIKING within the delivery period.

3.2 If delays are expected, the supplier shall immediately inform VIKING. Within one week, VIKING will give written notice to the supplier about its further course of action.

3.3 If the supplier is in default, VIKING may demand a no-fault penalty of ½%, but not more than 5% of the order value per week commenced. VIKING further reserves the right to assert the penalty until final payment is made even if it accepts the late delivery. The request for payment of a penalty shall not exclude the right to assert further damages. The penalty shall be set off against these damages. VIKING shall not be required to accept early deliveries or not explicitly agreed partial deliveries.

4. Prices

Orders will be placed only at fixed prices. Any price increase on any ground whatsoever shall be excluded. Unless otherwise agreed in writing, prices include "DDP" delivery pursuant to the Incoterms 2000, including packaging. VIKING will not pay any compensation for the preparation of the offer, for cost estimates, plans, etc.

5. Delivery, Transfer of Risk, Packaging

5.1 Deliveries will be made free and clear of any expenses to the place of receipt indicated by VIKING at the supplier's cost and expense. If VIKING, based on a separate written agreement, is required to pay freight costs by way of exception, the supplier shall choose the type of transport prescribed by VIKING, otherwise the most cost-efficient type of transport for VIKING.

5.2 Deliveries shall be performed in accordance with **VIKING'S Terms and Conditions of Delivery**.

5.3 The risk shall pass to VIKING not until VIKING has accepted the goods at the place of receipt or, if the goods are installed or assembled by the supplier, when they are put into operation at VIKING'S factory.

5.4 Prices shall be inclusive of packaging. If agreed otherwise in writing by way of exception, packaging shall be charged at cost price. If packaging is returned, at least 2/3 of the value charged shall be credited.

6. Proof of Origin

6.1 The supplier shall issue a written declaration on the origin of the delivered goods for customs purposes. If the status of the goods remains constant according to the preferential rules of origin, a long-term supplier's declaration shall be issued. This completed and validly signed declaration shall be available to VIKING on request 14 days after receipt.

6.2 The supplier shall disclose the origin of the deliveries upon submission of the quote, in any case at least upon delivery of the first samples. A change of origin shall be immediately and automatically notified to VIKING, using a form acknowledged by the customs authorities and stating the VIKING material number. If the supplier culpably violates this obligation, it shall be liable for all disadvantages VIKING incurs.

7. Mode of Payment, Transfer of Ownership, Assignment and Setoff

7.1 Payment shall be made after receipt of all goods or complete performance and after receipt of the invoice at VIKING'S discretion on the following conditions, unless otherwise agreed with the supplier:

With a 3% cash discount within 14 days or net within 60 days. Compliance with these time limits is ensured if payment is made within these time limits.

7.2 Unencumbered title to the goods will transfer to VIKING not later than upon payment. Payments shall be made only to the supplier. Claims may not be assigned to third parties.

7.3. The supplier may set off or assert rights of retention only if the counterclaims have been finally established or have come undisputed.

8. Requirements to be Met by the Deliveries, Warranty

8.1 The goods to be delivered shall have the features customary under normal trade practiced, subject to VIKING'S written order and the relevant DIN regulations and the relevant international standards, as amended from time to time.

8.2 The supplier warrants that the goods comply with the safety regulations applicable in Austria at the time of delivery. If the item delivered is a product within the meaning of the Product Safety Act (PSG 2004), the supplier warrants that the provisions of the PSG 2004 will be observed.

If there are concrete indications that the deliveries do not comply with the provisions of the PSG 2004, the supplier, upon request, shall prove compliance with the PSG 2004, e.g. by presenting a test certificate which shows that the deliveries have been subjected to a type test by a testing agency.

8.3 The supplier warrants that the goods delivered possess the warranted qualities, comply with the acknowledged engineering standards and are free and clear of any defects which eliminate or diminish the value or the fitness for their intended use and/or purpose.

8.4 VIKING shall be entitled to the statutory warranty rights - including damages - subject to the following:

8.4.1 If individual random samples of a shipment are defective, VIKING may assert claims with respect to the entire shipment and/or rescind the contract.

8.4.2 If the supplier fails to procure subsequent performance within a reasonable period granted by VIKING, VIKING may at its own discretion eliminate or procure the elimination by third parties of the defect at the supplier's cost and expense, or request a price reduction or rescind the contract. This shall not affect any other damages VIKING may assert. With the supplier's consent, VIKING may immediately rectify or procure the rectification by a third party of the defect, notwithstanding any other claims. Any related costs shall be borne by the supplier. VIKING may immediately eliminate or procure the elimination of insignificant defects (costs of up to 10% of the order value) also without agreement at the supplier's cost and expense. VIKING may also immediately rectify defects in order to avert risks to industrial safety or if

VIKING or third parties might suffer disproportionately high damage. In these cases, the supplier shall be informed without delay.

8.4.3 Unless otherwise agreed, the warranty period shall be 24 months after delivery of the terminal equipment to the end customer. The warranty period will, in any event, end not later than 48 months after the item has been delivered to VIKING.

8.5 If VIKING rescinds the purchase contract due to a defect, the supplier shall reimburse VIKING for the costs of the contract even if the supplier has not caused the defect.

8.6 If VIKING's distribution partners assert warranty claims against VIKING, the supplier, notwithstanding the time-limits referred to in Clause 8.4.3, will hold harmless and indemnify VIKING for and against such claims, provided they are asserted based on a defect of the item the supplier has delivered.

8.7 VIKING will comply with the obligation to give notice of defects pursuant to Section 377 of the Austrian Commercial Code (*HGB*), provided VIKING gives notice to the supplier of visible defects within 10 days after delivery and of hidden defects within 10 days after the defects were discovered. The acceptance of goods and the processing, payment and reordering of goods the defects of which have not yet been identified and notified does not constitute an approval of the delivery or as waiver of claims for defects.

8.8 Suppliers of machinery, vehicles and other items for which spare parts are required shall continue to supply to VIKING genuine spare parts, genuine accessories and tools for a period of up to 10 years after they have been put into operation after expiry of the guarantee period.

8.9 Before the items to be delivered are sent to VIKING, the latter may inspect and, if possible, put the items into operation for test purposes at the supplier's factory. For this purpose, the supplier shall grant VIKING access to its production plant upon prior notice.

8.10 If the supplier was obliged to maintain a constant minimum inventory level for VIKING, VIKING may convince itself thereof on site at regular intervals upon prior notice.

9. Product Liability, Release from Liability

9.1 The supplier shall release VIKING from product liability claims asserted by third parties if and when the supplier is responsible for the product defect and damage incurred under the principles laid down by product liability law. This shall not affect any other statutory claims.

9.2 Within the scope of this obligation, the supplier shall also reimburse VIKING for expenses VIKING may incur from or in connection with a recall campaign carried out by VIKING. VIKING will inform the supplier - to the extent possible and reasonable - of the contents and scope of the recall campaign to be carried out and will give the supplier the opportunity to issue a statement.

10. Supplier's Claims for Damage

10.1 The supplier may not assert damages on any legal ground whatsoever, unless these claims are based on VIKING'S intent or gross negligence. The supplier shall have to prove that VIKING acted with intent or gross negligence. The limitation of damages shall not apply to personal injury.

10.2 Any exclusion or limitation of VIKING'S liability shall also apply to the personal liability of VIKING'S employees, workers, staff, representatives and servants.

11. Release from Third Party Rights

The supplier warrants that no rights will be violated in connection with its delivery. In this context, VIKING points to the fact that VIKING products are distributed worldwide.

If a third party asserts a claim against VIKING claiming an infringement of his rights, the supplier shall hold harmless and indemnify VIKING for and against these claims, including all expenses VIKING necessarily incurs in connection with the claims asserted by the third party, including any legal fees (court fees, attorney's fees).

12. Force Majeure, Industrial Disputes

12.1 If VIKING is prevented from performing its contractual obligations, in particular from accepting the goods, due to force majeure, VIKING shall be released from performance as long as the obstacle prevails and a reasonable start-up period without the supplier being entitled to rescind the contract or to assert damages.

12.2 Force majeure shall include unforeseeable circumstances outside VIKING'S control which make it unreasonably difficult or temporarily impossible for VIKING to fulfill its obligations, e.g. industrial disputes, government action, lack of energy and substantial interruptions of operations, for example if the entire business or parts thereof or important departments are destroyed.

12.3 If these obstacles prevail for more than four months, both parties may rescind the contract.

13. Protection of Trademarks and of Intellectual Property

13.1 Goods the supplier produces in whole or in part according to VIKING'S specifications may be delivered to third parties only with VIKING'S written consent. This shall also apply to goods which VIKING did not accept from the supplier on justified grounds. In case of any violation, VIKING may rescind all orders not yet delivered without the supplier's right to claim a penalty. In addition, the supplier shall pay to VIKING a penalty of 25% of the net invoice value the third party has paid for the delivered goods. The penalty shall be set off against further damages which shall not be affected.

13.2 The agreements between VIKING and the supplier do not grant the supplier any rights to trademarks under which VIKING sells the products produced by the supplier. Should the supplier obtain rights to the trademarks, the supplier shall immediately transfer all such rights to VIKING. The supplier undertakes not to register as its own trademarks or procure the registration by a third party of the trademarks under which VIKING sells the products produced or delivered by the supplier and not to register or procure the registration by third parties of domains under this designation.

13.3 If the supplier makes any improvements in connection with the order, VIKING shall have a gratuitous, non-exclusive right to commercially exploit the improvement and property rights, if any.

14. Items Provided or Made Available by VIKING, Confidentiality

14.1 VIKING reserves title to any parts it may provide to the supplier. The supplier shall process or reshape parts for VIKING. If VIKING'S conditional goods are processed along with other items not owned by VIKING, VIKING shall obtain co-ownership of the new item in proportion of the value of VIKING'S items (purchase price plus VAT) compared to the other processed items at the time of processing.

If the item provided by VIKING is inseparably mixed with other items not owned by VIKING, VIKING shall obtain co-ownership of the new item in proportion of the value of VIKING'S conditional commodity (purchase price plus VAT) compared to the other mixed items at the time they have been mixed. If the item is mixed with other items in a manner that the supplier's item shall be considered as the main item, the parties agree that the supplier will transfer to VIKING pro-rata co-ownership to the item; the supplier will keep in custody the sole ownership or co-ownership for VIKING.

14.3 VIKING reserves title to designs, models, drawings, manuscripts, technical specifications, production equipment such as tools or devices (hereinafter Designs and Processing Equipment). The supplier shall use the Designs and Processing Equipment made available only for the production of the goods VIKING has ordered; the supplier shall not pass them on to third parties. They shall be immediately surrendered to VIKING at any time upon request free of charge.

The supplier shall insure the Designs and Processing Equipment made available against fire, damage caused by water and theft at their replacement value at its own cost and expense. Simultaneously, the supplier hereby assigns to VIKING all compensation claims arising from this insurance; VIKING hereby accepts the assignment.

14.4 Where VIKING has paid for Designs and Processing Equipment, the latter shall immediately transfer to VIKING'S ownership when produced by the supplier and will be kept in custody by the supplier for VIKING free of charge. The supplier hereby agrees to take possession of the items for VIKING. Should additional acts or declarations be necessary in order to transfer title to the tools, the supplier will automatically and immediately take these acts or issue these declarations. Unless otherwise agreed with the supplier in writing, payments shall become due and payable only if VIKING has examined the designs and issued a written technical release.

14.5 The supplier shall timely carry out any maintenance and inspection work in connection with tools and devices of VIKING that may be necessary as well as all maintenance and repair work at its own cost and expense. The supplier shall immediately inform VIKING of incidents, if any; any failure to give so notice culpably shall not affect damages.

14.6 The supplier shall keep strictly confidential all Designs and Processing Equipment as well as all other documents and information it has received from VIKING. They shall be disclosed to third parties only with VIKING'S express consent. The confidentiality obligation shall also survive the performance or termination of the contract. It shall expire if and when the knowledge acquired on the basis of the illustrations, drawings, calculations and other documents which have been made available has become public domain.

14.7 Documents relating to the design or production of VIKING products which VIKING made available to the supplier in the course of purchase negotiations which did not result in the placing of an order shall be immediately returned to VIKING after termination of the purchase negotiations.

15. Advertising

VIKING'S order/business relationships may be used and/or announced for advertising purposes only with its prior written consent.

16. Statute of Limitation

Notwithstanding Clause 8.4.3 hereof, the statutory limitation periods shall apply.

17. Amendments and Modifications, Place of Performance, Place of Jurisdiction, Choice of Law

17.1 Any amendment of and/or modification to the contract shall be made in writing; this shall also apply to a waiver of the written form requirement.

Should any term hereof be or become invalid, this shall not affect the remaining terms. The invalid terms shall be replaced by terms which closest reflect the commercially intended purpose.

17.2 Place of performance for deliveries and services shall be the seat of our ordering factory. Place of performance for payments shall be Langkampfen.

17.3 If the supplier is a business man, exclusive place of jurisdiction shall be Kufstein. VIKING reserves the right to file complaints also at the supplier's seat.

17.4 All relationships between the supplier and VIKING shall be exclusively governed by and construed in accordance with Austrian law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods and the international conflict of law rules.

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