

# General Terms of Sale

## Section 1 - General

1.1 All goods and services supplied by companies in the Voith Group with registered offices in Germany (hereinafter referred to individually and collectively as the „Seller“) shall be subject to these General Terms of Sale and to any separate contractual agreements. Any differing terms and conditions of purchase of the purchaser shall not become part of the contract either when an order is accepted or if they are not objected to.

1.2 If there is no separate agreement, a contract shall be concluded when the Seller issues his written confirmation of the order. Written form shall also include confirmations sent in textform by datatransfer (e.g. email) or fax.

1.3 If clauses customary in the trade are agreed, the rules on interpretation of them as defined in the latest version of Incoterms shall apply, unless otherwise specified in the following.

1.4 Documents, such as illustrations, drawings and information on dimensions and performance shall only be approximately authoritative and are not considered to be warranted characteristics, unless they are expressly designated as binding.

1.5 The Seller reserves ownership of and copyrights to samples, cost estimates, drawings and the like, and to information embodied in a tangible or intangible manner, including in electronic form. This information shall not be reproduced or made available to a third party without the consent of the Seller. The Seller shall make documents designated as confidential by the purchaser available to a third party only with the consent of the purchaser.

## Section 2 - Prices and payment

2.1 Unless agreed separately, the prices shall be ex works of the Seller and shall include loading at the works, but not include insurance costs, packaging, unloading and all other auxiliary costs. Value-added tax shall be added to the prices at the respective statutory rate.

2.2 Unless separately agreed, payments shall be made without deduction to the Seller's account, namely:

- a down-payment of one third when the order is placed,
- one third payable when half the delivery period expires,
- the remainder payable upon delivery or upon notification of readiness for shipment if delivery is not possible immediately after completion for reasons for which the Seller is not responsible.

2.3 Unless otherwise specified in the acknowledgement of order, payments shall be due net (without deduction) within 30 days of the invoice date. The statutory provisions regarding the consequences of default in payment shall apply.

2.4 The purchaser shall be entitled to offset his counterclaims only if they have been ruled on finally and conclusively, are not disputed or have been acknowledged by the Seller. In addition, the purchaser shall be authorised to exercise a right

of retention only insofar as his counterclaim is founded on the same contractual relationship.

## Section 3 - Delivery period, delay in delivery, force majeure

3.1 The delivery period shall be as agreed by the parties. To allow it to commence and to be observed by the Seller, all commercial and technical questions must first be clarified and the purchaser must have fulfilled all his obligations, such as furnishing of the necessary official certificates or approvals or making of a down-payment.

If this is not the case, the delivery period shall be extended commensurately. This shall not apply if the Seller is responsible for the delay.

3.2 The delivery period shall be deemed to have been observed if the article to be supplied has left the Seller's works or the Seller has given notification that it is ready for shipment by the time the delivery period expires. If acceptance is contractually required, the contractually specified acceptance deadline, or alternatively the time at which notification of readiness for acceptance is given, shall be authoritative, except in the case where the purchaser justifiably refuses acceptance.

3.3 If shipment or acceptance of the article to be supplied is delayed for reasons for which the purchaser is responsible or if the purchaser culpably violates other duties of cooperation on his part, the Seller shall be authorised to demand compensation for the losses he has incurred in this regard, including any additional expenses. Without prejudice to further claims, the Seller can otherwise dispose of the article to be supplied after he has set a reasonable period of grace and this has expired without remedy, in particular store the article to be supplied at the risk and expense of the purchaser and/or supply the purchaser within a reasonably extended period of time.

3.4 If a failure to observe the delivery period is due to force majeure, such as natural disasters, epidemics, war, armed conflicts, civil war, revolution, terrorism, sabotage, nuclear/reactor accidents, labour disputes or other events that are outside the Seller's control, the Seller shall be discharged from his performance obligations for the duration of the event and the delivery period shall be extended appropriately. The Seller shall inform the purchaser of when such circumstances start and end as soon as possible. If the event lasts for more than 6 months, the Seller shall also be authorised to terminate the contract.

3.5 If the Seller is in delay and the purchaser incurs losses as a result, the latter shall be authorised to demand lump-sum compensation for the losses due to such delay. This shall be 0.5% of the value of that part of the overall delivery that cannot be used on time or in accordance with the contract as a result of the delay, for each full week of the delay but a maximum total amount of 5% of said value.

If the Seller is in delay and the purchaser grants him a reasonable period of time to perform his obligation – taking into account the statutory exceptions – and if this period of time is not observed for reasons for which the Seller is responsible, the purchaser shall be authorised to rescind the contract within the framework of the statutory provisions.

Further claims from delay in delivery shall be excluded within the framework of Art. 100 para. 1 of the Code of Obligations (OR).

#### **Section 4 - Transfer of risk, acceptance, packaging**

4.1 Unless otherwise agreed individually, risk shall pass to the purchaser upon the start of loading of the parts to be supplied at the Seller's works, even if partial deliveries are made or the Seller has assumed other services, such as shipping cost or delivery and installation. Subject to any different agreements, the obligation to load, stow and secure the delivered article safely during transport and unload it is the responsibility of the purchaser and his freight forwarding agent, freight carrier or agent making the collection; he shall also have an obligation to provide and make available at his own expense appropriate securing devices.

4.2 If acceptance has been agreed, this must be conducted immediately at the agreed time, alternatively after the Seller has given notification that the object is ready for acceptance. The purchaser cannot refuse acceptance due to an insignificant defect, provided the Seller acknowledges his obligation to remedy the defect.

4.3 If shipment or acceptance is delayed or not performed due to circumstances not attributable to the Seller, the risk of accidental loss or accidental deterioration of the article to be supplied shall pass to the purchaser from the day on which notice is given of its readiness for shipment or acceptance. The Seller undertakes to take out insurance requested by the purchaser, such as transport insurance, at the expense of the purchaser.

4.4 Partial deliveries shall be permitted as long as this is reasonable for the purchaser.

4.5 Transport and other packaging shall not be taken back, except for wooden pallets. The purchaser shall dispose of the packaging at his own expense.

#### **Section 5 - Retention of title, assignment of claims, withdrawal**

5.1 The Seller shall retain his title to the supplied article until all claims have been settled, in particular the respective outstanding balances to which the Seller is entitled as part of the business relationship with the purchaser (overall retention of title). If the destination state of the goods is in Switzerland, the Seller shall be entitled to have the retention of ownership registered in the retention of ownership register. If the destination country of the goods is outside Switzerland and if the validity of the retention of title in the destination country of the goods requires an entry in a register or a similar procedure, the Seller shall be entitled to have the retention of title registered and take any action required for the validity of the retention of ownership, with the purchaser providing any cooperation required.

5.2 The purchaser shall be obliged to treat the delivered article subject to retention of title (retained goods) with care; in particular, he shall be obliged at his own expense to insure it adequately against theft, breakage, fire, water and other damage at the reinstatement value. The Seller shall be authorised to take out this insurance at the expense of the purchaser if the purchaser has demonstrably not taken it out.

5.3 If the retained goods are combined with other objects such that they become an essential part of another object, the Seller shall obtain co-ownership of the other object. If a new object is produced by combining or processing of the

retained goods, the Seller shall always acquire a corresponding right of co-ownership.

5.4 The purchaser shall be authorised to resell the retained goods in the normal course of business. If the retained goods that have been supplied or produced in accordance with Section 5.3 are sold, the purchaser hereby assigns the claims against his purchasers from the sale (total sum invoiced including value-added tax) or a corresponding part thereof, along with all secondary rights, to the Seller until the latter's claims have been settled in full. The purchaser is obligated to provide the Seller with a copy of the invoice in respect of the resale without delay.

5.5 The purchaser shall remain authorised to collect the claim assigned pursuant to Section 5.4; the Seller's authorisation to collect the claim himself shall remain unaffected thereby. The Seller shall not collect the claim as long as the purchaser meets his payment obligations from the collected amounts, is not in arrears with payment or has not discontinued payment, and an application for instigation of insolvency proceedings, administration of an insolvent estate or similar procedure has not been filed against the purchaser with a view to general execution.

If one of the above situations applies, the Seller can demand that the purchaser disclose the claims assigned to the Seller as security and provide all details and documents required to collect them.

5.6 If the purchaser acts in breach of contract, in particular if he is in arrears with payment, the Seller shall be authorised to take back the supplied articles after issuing a warning. This, like any levy of execution on the articles by the Seller, shall not constitute a rescission of the contract by the Seller.

5.7 An application to instigate insolvency proceedings, administration of an insolvent estate or similar procedure with a view to general execution shall authorise the Seller, upon its choice (i) to rescind the contract and to demand immediate surrender of the supplied article or (ii) to provide further contractual obligations conditional upon advance payment-performance. The choice of the latter does not bar the remedy of the Seller to rescind the contract later on.

#### **Section 6 - Liability for defects**

The Seller shall be liable for defects and legal imperfections in title to the exclusion of further claims – subject to Section 7 – as follows:

##### **6.1 Material defects**

6.1.1 Details given by the Seller about the properties of the article to be supplied are the result of his measurements and calculations and shall be the article's agreed nature, but not its warranted qualities or guarantees within the meaning of Article 197 of the Code of Obligations (OR).

6.1.2 The purchaser can assert claims due to a material defect only if he has properly fulfilled his obligations to examine the supplied article and to give notice of defects in accordance with Article 201 of the Code of Obligations (OR) and Section 6.1.3 below.

6.1.3 All parts that prove to be defective as a result of circumstances before the transfer risk shall, at the discretion of the Seller, be repaired or resupplied free of charge. Such defects shall be reported to the Seller clearly and in writing as soon as they are discovered. Replaced parts shall become the property of the Seller.

6.1.4 The Seller's liability for material defects in essential third-party products, which are an integral part or accessories of the delivered goods, shall be limited to assignment of the claims for material defects of the Seller against his supplier. If the assigned claims for material defects are not settled, the claims of the purchaser against the Seller due to material defects shall be revived.

6.1.5 Following agreement with the Seller, the purchaser shall give the Seller the required time and opportunity to make all the repairs and to supply such replacements as the Seller deems necessary; otherwise, the Seller shall be discharged from liability for the resultant consequences. The purchaser shall have the right to rectify the defect himself or have it rectified by a third party and demand compensation for his necessary expenses from the Seller only in urgent cases of risk to safety or to avert disproportionately great damage; the Seller shall be informed immediately thereof.

6.1.6 Of the direct costs incurred as a result of repair or delivery of a replacement, the Seller shall – provided the complaint proves to be justified – bear the costs of the replacement item, including the cost of shipping it to the place of performance. The Seller shall also bear the reasonable costs of removing the defective part supplied and the costs of installing the replacement item, if installation of the part that later became defective was originally part of the contract. The acceptance of further costs incurred by the Seller in connection with rectification or replacement delivery shall be expressly excluded.

6.1.7 Within the framework of the statutory provisions, the purchaser shall have the right to rescind the contract if the Seller fails to remedy a material defect by a reasonable period of time set for him to repair the article or supply a replacement where non-compliance within the additional period is due to circumstances which can be attributed to the Seller but not in cases of force majeure or similar instances. If the defect is only insignificant and the Seller has failed to remedy the defect by a reasonable period of time set for him to repair the article or supply a replacement, the purchaser shall merely have a right to a reduction in the contractual price.

6.1.8 The Seller shall not be liable for defects that are attributable to measures or designs expressly demanded by the purchaser or that occur in materials or products which have been provided by the purchaser or whose use the purchaser has expressly demanded contrary to the Seller's advice.

In particular, no liability shall be assumed in the following cases:

Unsuitable or improper use or incorrect installation or commissioning by the purchaser or a third party, failure to use original parts and materials, normal wear and tear, incorrect or negligent handling, improper maintenance, unsuitable operating supplies, faulty construction work, unsuitable subsoil, failure to back up or inadequate backing up of data by the purchaser; failure to check or inadequate checking of programs and data for computer viruses (as defined in Section 9.3) by the purchaser, unusual effects of any kind (e.g. vibrations from other assemblies, ingress of foreign matter), chemical, electrochemical or electrical influences – unless the Seller is to blame for them, violation by the purchaser of the obligations described in section 6.2.4.

6.1.9 If the purchaser or a third party carries out repairs improperly, the Seller shall not be liable for the resultant consequences.

The same shall apply to changes to the supplied article that have been made without the prior consent of the Seller.

6.1.10 The purchaser shall be obliged to return the defective part to the Seller at the request of the Seller.

6.1.11 Subject to Section 8.2, the above warranty provisions shall apply accordingly to rectification of defects.

## 6.2 Legal imperfections in title

6.2.1 If use of the supplied article results in the infringement of industry property rights such as patents or copyrights of third parties, the Seller shall in principle and at his own expense obtain the right for the purchaser to continue using it or modify the supplied article in a way that the purchaser can reasonably be expected to accept so that the property right is no longer infringed.

If this is not economically feasible or not possible within a reasonable period of time, the purchaser shall be authorised to rescind the contract. If said conditions exist, the Seller shall also have the right to rescind the contract.

Moreover, the Seller shall – if he is to blame – indemnify the purchaser against claims of the owner of the property rights that are undisputed or have been ruled on finally and conclusively.

6.2.2 Subject to Section 7, the Seller's obligations specified in Section 6.2.1 shall be final in relation to the infringement of proprietary rights or copyrights.

These obligations shall exist only if

- the purchaser informs the Seller as soon as infringements of proprietary rights or copyrights are claimed,
- the purchaser assists the Seller to a reasonable extent in defending against the claims or enables the Seller to make the modifications as stated in Section 6.2.1,
- the Seller retains the right to undertake all defensive measures, including out-of-court settlement,
- the legal imperfection in title is not attributable to an instruction by the purchaser or to the fact that the infringement only occurred as a result of combination of the supplied article by the purchaser with products or deliveries outside the Seller's scope of supply, and
- the infringement has not been caused by the fact that the purchaser has modified the supplied article on his own or used it in a way not in conformity with the contract.

6.2.3 The Seller does not warrant that the end products manufactured on the supplied article, including the manufacturing process used, are free of third-party property rights.

6.2.4 If the purchaser intends to export or transfer the delivery item to a country or territory against which the United Nations, the European Union or the United States of America has imposed or implemented an embargo or any other export or re-export restrictions or intends to use the delivery item in such country or territory, the purchaser shall notify the seller of the same in writing before the contract is entered into. If the purchaser adopts such an intention after the contract is entered into, such export, transfer or use shall be subject to the seller's prior written approval. If the delivery item is resold by the purchaser, the latter shall enter agreements to ensure that these obligations are transferred through to the final customer ultimately holding the delivery item. In the event of a violation, the seller shall be entitled to terminate the contract with immediate effect.

## Section 7 - Liability

7.1 If the supplied article cannot be used by the purchaser in accordance with the contract because the Seller is to blame for failure to implement or inadequate implementation of suggestions and advice provided before or after conclusion of the contract or for violation of other additional contractual obligations – in particular the obligation to provide instructions on the use of and maintenance of the supplied article – the provisions of Sections 6 and 7.2 shall apply accordingly, to the exclusion of further claims by the purchaser.

7.2 The Seller shall be liable for damage not caused to the supplied article itself – on whatever legal grounds, including liability for auxiliary personnel and tort – only

- if he has acted with intent,
- if he has been grossly negligent,
- in the case of defects the Seller has concealed with intent to deceive,
- in the case of defects to the supplied article, provided a mandatory legal obligation exists in accordance with the Swiss Product Liability Law (*Produkthaftungsgesetz*) or other relevant foreign laws.

7.3 Further claims for damages – on whatever legal grounds – shall be excluded. If liability for damages on the part of the Seller is excluded or limited, this shall also apply to personal liability for damages on the part of the Seller's employees.

## Section 8 - Limitation of actions

8.1 All claims of the purchaser – on whatever legal grounds – shall become statute-barred in 12 months. The statutory periods of limitation shall apply to intent or intent to deceive, culpable injury to life, body or health and claims under the Swiss Product Liability Law. Defects in a building or in supplied articles that have been used for a building in accordance with their customary usage and have caused the defect in the building shall be subject to a limitation period of three years.

8.2 If, as part of rectification of a defect, the purchaser obtains new rights in relation to defects, all claims arising from these rights shall become statute-barred at the latest 6 months from when the defect was rectified whereby such claims shall exclusively be limited to defects that arise directly in connection with the rectification of the defect.

## Section 9 - Use of software

9.1 If software is supplied, the purchaser shall be granted a non-exclusive right to use it and its documentation. It shall be provided for use on the intended object supplied. The software shall not be used on more than one system.

9.2 The purchaser shall reproduce, revise, compile or translate the software or convert it from object code to source code only to the extent permitted by Copyright Law (*UrG*). The purchaser undertakes not to remove manufacturer's data – in particular copyright notices – or to change them without the Seller's prior written consent.

All other rights to the software and documentation, including copies thereof, shall remain with the Seller or the software supplier. Sublicensing of it shall not be permitted.

9.3 Before providing the software to the purchaser, the Seller shall use state-of-the-art, up-to-date protection measures to check it for computer viruses, Trojan horses, virus hoaxes and similar programs, program parts and malicious functions that may result in loss or falsification of data or programs or impairment of systems or parts of them (hereinafter referred

to as "computer viruses"). Nevertheless, it is not possible to rule out the risk that the software contains unknown or mutated computer viruses or that such viruses may enter an (operating or control) system of the purchaser at a later time and possibly change or delete program data of the software or other data or programs or impair systems.

9.4 Consequently, the purchaser himself shall likewise take measures to protect against computer viruses and other destructive data. The purchaser shall be obliged to test whether the supplied software or files are infected with computer viruses before executing the software or opening the files. This shall also apply to software the purchaser wishes to use as part of his (operating or control) systems, where the functionality of the Seller's software may be affected thereby.

9.5 The purchaser shall be obliged to back up data himself on a regular basis in order to prevent loss of it as a result of computer viruses. If data is lost or manipulated, the Seller shall be liable only for the cost involved in restoring the correct data if the purchaser has backed it up properly.

## Section 10 - Applicable law, place of jurisdiction

10.1 In addition to these provisions the substantive law of Switzerland shall apply to all legal relationships between the Seller and the purchaser without applying conflicting legal regulations and the regulations of the United Nations Convention dated 11 April 1980 on the international sale of goods (CISG).

10.2 Any dispute, controversy or claim arising out of or in relation to the contractual relationship between the Seller and the purchaser, including the validity, invalidity, breach, or termination thereof, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date on which the Notice of Arbitration is submitted in accordance with these Rules. The number of arbitrators shall be three; the venue for the arbitration shall be Zurich. The arbitral proceedings shall be conducted in German. However, the Seller shall also be authorised at his discretion to file legal action at the Commercial Court of the Canton of Zurich or at the purchaser's relevant place of jurisdiction.

## Section 11 - General provisions

11.1 Unless otherwise specified in the acknowledgement of order, the place of performance for the parties' mutual obligations from the contractual relationship shall be the place of the Seller's registered offices. This shall also apply if clauses customary in the trade have been agreed.

11.2 Declarations serving to establish, safeguard or exercise rights shall not be valid unless given in writing. Written form shall also include declarations sent in textform by data transfer (e.g. email) or fax, unless the written form is mandatory according to applicable law.

11.3 The purchaser shall not assign his contractual rights to a third party without the written consent of the Seller.

11.4 If the Seller provides installation, commissioning, maintenance, repair or similar services, the relevant special terms and conditions of the Seller shall apply additionally and with precedence.