

General Terms and Conditions for deliveries, assembly and repair services  
of VSR Industrietechnik GmbH  
(Last revised: March 2017)

**1.0 Scope, general provisions**

- 1.1 These General Terms and Conditions for deliveries, assembly and repair services ("**Terms**") apply exclusively to business transactions with entrepreneurs within the meaning of Section 14 of the German Civil Code (*BGB*), legal entities under public law and special trusts under public law ("**Customer**"). These Terms also apply to any future sales contract, contract for work and materials and contract for work ("**Contract**") with our Customer within the scope of an ongoing business relationship, whereas we are not required to make reference to them in each individual case.
- 1.2 All deliveries, work services, including assembly and repair services, as well as other services, including ancillary services under a Contract ("**Deliveries**"), are performed on the basis of these Terms. We do not accept any Customer's terms and conditions contrary to or deviating from our Terms or from the statutory provisions, unless we explicitly agreed to them in writing. This also applies if we execute any Deliveries without reservation or accept any payments from the Customer.
- 1.3 If these Terms make reference to a written form requirement, text form within the meaning of Section 126 b of the German Civil Code (*BGB*) will be sufficient to meet the requirement.
- 1.4 The interpretation of commerce clauses is subject to the Incoterms as amended at the time of the conclusion of the Contract.

**2.0 Conclusion of the Contract**

- 2.1 Our contract offers are always subject to change and non-binding. The dimension, weight, equipment and performance specifications supplied on the internet, in brochures, catalogues, price lists, advertisements and in other advertisement material are for general information purposes and serve to initiate contractual negotiations for concluding a Contract with the Customer. Printing errors, changes and other errors remain reserved.
- 2.2 We reserve the right to enter into an agreement with the Customer, based on which our offers and design work are subject to a charge.
- 2.3 We may accept a contract offer from the Customer within two (2) weeks after being submitted. The Customer is bound to its contract offer until the expiry of this period. Our silence does not substantiate an assumption of the conclusion of a Contract. The Contract takes effect subject to our written order confirmation. If the Customer does not receive our order confirmation in time, the latter shall notify us thereof without delay. A Contract will further be established if we execute Deliveries without reservation.
- 2.4 If a confirmation letter of the Customer deviates from our order confirmation, the Customer shall specifically highlight the deviations as such; such deviations shall only become contractual content subject to our written approval.
- 2.5 We reserve the right to perform design changes in the form of technical improvements to the Delivery Item, provided they are reasonable for the Customer.

**3.0 Prices and terms of payment**

- 3.1 The following shall apply to Deliveries under a sales contract or a contract for work and materials:
- 3.1.1 Our prices are net prices "ex works" (EXW), unless otherwise agreed. The Customer shall bear the costs for packaging, freight, customs, import and other ancillary charges as well as the applicable VAT in addition.
- 3.1.2 Unless otherwise agreed, contractual payments are payable after eight days (without deduction).
- 3.2 The following shall apply to Deliveries under a contract of work:
- 3.2.1 In case the Deliveries are work services, such as assembly and repair services under a Contract ("**Work Services**"), they will be remunerated on an hourly basis in accordance with the hourly rates stipulated in the Contract, unless no fixed price was agreed.
- 3.2.2 The waiting times, delays and additional journeys not in our responsibility, as well as services deviating from or in addition to the original Work Services are not included in a fixed price for assembly services.
- 3.2.3 The agreed remuneration net. The applicable VAT shall be borne by the Customer additionally.
- 3.2.4 The remuneration is due for payment no later than upon the acceptance of the Work Services. However, we are entitled to demand an appropriate advance payment from the Customer for any partial services already rendered.
- 3.3 The day of receipt of the payment amount on our account is decisive for determining the punctuality of the payment of the Customer. Our accepted mode of payment is bank transfer.
- 3.4 If the Customer defaults on payment, we will be entitled to charge default interest in the amount of nine (9) percentage points above the applicable base interest rate of the European Central Bank. Any further claims and rights on our part due to the Customer's payment default shall remain unaffected thereof.
- 3.5 If we become aware of any circumstances subsequent to the conclusion of the Contract which put the creditworthiness of the Customer in question, and if this poses a substantial danger to our claim for payment, we may refuse contractual deliveries until the claims were settled by the Customer or demand for appropriate security to be provided. We may set a reasonable grace period for the Customer, within which it shall settle the outstanding claims or provide security. We are entitled to rescind the Contract upon the unsuccessful expiry of the grace period.
- 3.6 The Customer will only be entitled to any offsetting rights and rights of retention, provided counterclaims were legally established or are undisputed or if the counterclaim is in a synallagmatic relationship with our claim.
- 4.0 Terms of delivery and delivery dates**
- 4.1 We are entitled to effect partial deliveries or render partial services to the extent reasonable for the Customer.
- 4.2 Delivery and performance dates ("**Delivery Dates**") are

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only binding, provided they were agreed upon with the Customer in writing.

- 4.3 The following additional regulations shall apply to Deliveries under a sales contract or a contract for work and materials:
- 4.3.1 Delivery is effected "ex works" (EXW), unless otherwise explicitly agreed upon. The goods to be delivered ("Delivery Item") shall be shipped uninsured. At the request and expense of the customer, we shall insure the Delivery Item against the typical risks of transport.
- 4.3.2 Unless otherwise agreed upon in the Contract, the time at which we notify the Customer that the Delivery Item is ready for collection shall be decisive in determining if Delivery Dates were complied with, even if the Delivery Item cannot be collected in time through no fault of our own.
- 4.3.3 Meeting a Delivery Date is subject to the timely self-delivery by our suppliers.
- 4.3.4 If the Customer defaults on acceptance, we will be entitled to store the Delivery Item at the risk and expense of the Customer at our own facilities or with a third party.
- 4.4 For Work Services, Delivery Dates are deemed complied with, if the services were rendered by the time the Customer accepts them.
- 4.5 Compliance with the Delivery Dates requires for all technical questions to be clarified, for all necessary permits and documents to be available, and for any of the Customer's obligations to cooperate and incidental obligations to be fulfilled.
- 4.6 If the Deliveries are delayed due to the Customer culpably failing to fulfil any duties to cooperate, incidental obligations or other contractual obligations, we will be entitled to demand from the Customer payment of a contractual penalty in the amount of 0.1% of the net order value per day, yet in total no more than in the amount of 5% of the net order value. Our right to assert any further claims for damages pursuant to the statutory requirements shall remain unaffected thereof. Any contractual penalties already paid shall, however, be taken into account with regard to any damages.
- 4.7 In case of any events of force majeure, strikes, malfunctions or other unforeseeable, unavoidable or extraordinary events outside of our sphere of influence, the agreed delivery dates will be extended for the duration of the corresponding event. If the duration of the event is more than three (3) months, we as well as the Customer will have the right to rescind the Contract.

## 5.0 Delay

- 5.1 In case we default on delivery, the Customer's claims for damages shall, in addition to the performance arising from or in connection with the default, be limited to 1% of the net order value for each full week of delay, yet in total to a maximum of 5% of the net order value. This limitation does not apply to intentional or grossly negligent behaviour or to culpable injury to life, limb or health on our part.
- 5.2 The Customer may only rescind the Contract due to a delay in delivery pursuant to the statutory provisions, provided we are responsible for the delay in delivery. Any statutory rights to termination shall remain unaffected hereof. The Customer shall at our request and within a reasonable grace period indicate if it will rescind the Contract or insist on delivery.

## 6.0 Transfer of risk

- 6.1 With regard to Deliveries under a sales contract or a contract for work on materials, the risk of the accidental destruction and accidental deterioration is transferred to the Customer as soon as we made the Delivery Item available at the agreed delivery location and notified the Customer in accordance with Clause 4.3.2, yet no later than upon transferring the Delivery Item to the Customer. This also applies to partial deliveries.
- 6.2 For Work Services, the risk of the accidental destruction and accidental deterioration is transferred to the Customer as soon as the Work Services are under the physical control of the Customer, yet no later than upon acceptance.
- 6.3 Apart from that, with regard to Deliveries under a Contract, the risk of the accidental destruction and the accidental deterioration is furthermore transferred to the Customer as soon as the Customer delays on acceptance or if the shipment, delivery, the start, performance or receipt of the Deliveries is delayed in their own operation or if a contractually agreed trial operation of Deliveries is delayed for reasons the Customer is responsible for. The Deliveries may be insured by us according to the wishes of the Customer and at the expense of the Customer.

## 7.0 Work services and acceptance

- 7.1 The Customer shall undertake to perform the necessary measures for ensuring the safety of our personnel and equipment at the location at which the work services are rendered ("Place of Work"). It shall instruct us on special dangers and risks.
- 7.2 Unless otherwise agreed upon, the Customer shall in particular provide the following at the Place of Work:
- the commodity goods and materials required to perform the Work Services, such as lifting devices and other devices and lubricants;
  - energy and water at the Place of Work, including connections, heating and lighting in accordance with our corresponding installation instructions;
  - provide sufficiently large, appropriate, dry and lockable rooms for the storage of machine parts, apparatuses, materials, tools etc. and appropriate work and common rooms, including sanitary facilities appropriate in the circumstances, for the assembly personnel at the Place of Work.
- 7.3 Prior to initiating the Work Services, the provisions and items required for starting the work must be at the Place of Work with all required preliminary work finished, e.g. access roads and the Place of Work must be levelled and cleared.
- 7.4 The Customer shall ensure that the Work Services can be initiated in time. If the Work Services are delayed due to circumstances not in our responsibility, the Customer shall bear any additionally required expenses, e.g. for trips and waiting time.
- 7.5 If the acceptance is required by law or by Contract, it shall be performed immediately upon the Work Services being rendered or upon receiving confirmation of the completion of the Work Services, even in case of a partial performance or completion. The costs of acceptance shall be borne by the Customer. If special performance features were agreed upon and if we demand acceptance, the Customer shall honour our request for acceptance within two (2) weeks. In case the acceptance does not take place in time or only partially, acceptance will be deemed successful after our written

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demand for acceptance and expiry of an appropriate grace period, provided we specifically pointed out this consequence. The Customer is not entitled to refuse acceptance due to minor defects.

**8.0 Retention of title**

- 8.1 The items of deliveries (such as Delivery Items, replacement parts related to the performance of Work Services) under a Contract ("**Reserved Goods**") remain our property until all our claims against the Customer arising from the business relationship were settled in full.
- 8.2 The Customer shall undertake to handle the Reserved Goods with care. The Customer shall perform any required maintenance and inspection work on the Reserved Goods at its own expense and risk.
- 8.3 The Customer is not entitled to pledge or collateralise Reserved Goods. The Customer shall immediately notify us of any change in ownership of the Reserved Goods or of any change in its own registered office.
- 8.4 The Customer shall undertake to immediately notify us of any third party accessing the Reserved Goods, e.g. in case of a pledge or confiscation, as well as any other third-party disposals related to Reserved Goods. The Customer shall furnish us with all information and documents required to exercise our rights with regard to the Reserved Goods.
- 8.5 The Customer shall also insure the Reserved Goods for the time subsequent to the transfer of risk at their original value against burglary, breakage, fire and water damage at its own expense. The Customer shall further undertake to insure the Reserved Goods against the danger of destruction, loss and damage during transport. The Customer shall immediately notify us of any damage to or destruction of the Reserved Goods. At our request, the Customer shall make all damage-related documents, particularly damage appraisals, available to us, inform us of any existing insurance and at our discretion either provide us with the insurance policy or a security certificate issued by the insurer for our Reserved Goods.
- 8.6 The Customer is entitled to resell the Reserved Goods in the course of ordinary business. By way of security, the Customer already now assigns all claims against third parties arising from the resale of the Reserved Goods to us. We hereby accept the assignment. If the Reserved Goods are resold together with other goods which are not our property, the Customer's claim against its purchasers is deemed assigned in the amount of the price agreed between us and the Customer with regard to the Reserved Goods. The Customer shall remain authorised to collect the claims after assigning the corresponding claim. We will reserve the right to revoke the right to resell the Reserved Goods and to collect the claim ourselves in this case, if the Customer defaults on payment or for another important reason. In case of a revocation of the authorisation to collect the claim, the Customer shall, at our request, undertake to furnish us with all documents and information required to collect the claims.
- 8.7 The Customer is authorised to process the Reserved Goods or combine them with or connect them to other items. The Customer shall in any case process, combine or connect ("**Processing**") the Reserved Goods without charging us as the manufacturer within the meaning of Section 950 of the German Civil Code (*BGB*). In case the Reserved Goods are processed by the Customer with other items which are not our property, we have a right of co-ownership to the new item in relation of the invoice value of the processed Reserved Goods to the invoice value of the other connected / combined items. In this case, the Customer shall store the joint property on

our behalf free of charge. The provisions regarding Reserved Goods as indicated in these Terms shall apply correspondingly to items created through Processing and to which we acquire full or partial ownership.

- 8.8 We shall undertake to release the securities we are entitled to (Reserved Goods as well as the items and / or claims taking their place), provided their estimated value exceeds the amount of the secured claims by more than 50%. We may choose the securities to be released subsequently at our own discretion.
- 8.9 We reserve all intellectual and industrial property rights, such as patent, trademark, utility model and design rights as well as copyrights to the images, forms, templates, patterns, designs and design proposals, models, profiles, drawings, standard sheets, print templates, teachings, knowhow, calculations, work documents and other files and documents ("**Documents**"), particularly information on production procedures, recipes and plant configurations. The Documents may only be used by the Customer for the intended purpose of the Contract without our prior written approval. The same applies to any items created using the Documents.
- 9.0 Defects**
- 9.1 We shall undertake to effect Deliveries free of any material defects and defects in title ("**Defects**"). In case of a Defect, the Customer may demand rectification. We shall perform the rectification at our discretion either by improvement or by effecting a replacement Delivery. We generally perform the rectification as a gesture of goodwill and without acknowledging any legal obligation. An acknowledgement resulting in a recommencement of the statute of limitations only applies in case we made a corresponding explicit statement towards the Customer.
- 9.2 The Customer shall only have a right to self-performance, provided we are responsible for the Defect.
- 9.3 If the rectification fails, the Customer may at its own discretion have the price reduced or rescind the Contract. At our request, the Customer shall indicate to us within a reasonable grace period if it will withdraw from the contract due to a Defect or if it will continue to insist on the Deliveries.
- 9.4 The Customer shall submit the notice of defects in writing.
- 9.5 The Customer will have no recourse claims against us pursuant to Section 478 of the German Civil Code (*BGB*), if the Customer entered into any agreements in excess of the statutory defect rights with the Customer.
- 9.6 The Customer's claims for defects fall under the statute of limitations within twelve (12) months from the statutory start of the statute of limitations; the same shall apply with regard to rights for defects. Notwithstanding the foregoing, the statutory statute of limitations applies a) in relation to all claims and rights of the Customer if Section 438 Para. 1 No. 1 of the German Civil Code (*BGB*), Section 438 Para. 1 No. 2 and Section 634 a Para. 1 No. 2 of the German Civil Code (*BGB*), Section 479 Para. 1 of the German Civil Code (*BGB*) apply, or in case of malicious concealment of the Defect, and b) in case of any claims for damages due to injury to life, limb or health, claims from the Product Liability Act and in case of grossly negligent or intentional violations of obligations.
- 9.7 Irrespective of the claims and rights indicated in Clause 9, the Customer has no further claims and rights due to Defects, except for claims for damages and the reimbursement of expenses. Claims for damages and

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the reimbursement of expenses may be asserted pursuant to the provisions of Clause 10.

**10.0 Claims for damages and the reimbursement of expenses**

10.1 We do not assume any liability for claims for damages and the reimbursement of expenses towards the Customer, irrespective of the legal basis (contract, tort, violation of a contractual obligation, indemnity etc.).

10.2 The foregoing limitation of liability will not apply to liability under the Product Liability Act, in cases of intent or gross negligence, culpable injury to life, limb or health, as well in case of violations of essential contractual obligations. Essential contractual obligations are obligations whose fulfilment is essential for enabling the due performance of the Contract and on whose observation the Customer generally relies and may rely on.

10.3 Our liability for the violation of essential contractual obligations is, however, limited to the compensation of the foreseeable damage typical for the contract, provided we do not assume any liability due to intent or gross negligence, injury to life, limb or health or pursuant to the Product Liability Act.

10.4 To the extent our liability as indicated in the foregoing clauses is excluded or limited, this shall also apply to the corresponding personal liability of our performing agents and vicarious agents, representatives or employees. Our liability for delayed Deliveries is foremost subject to Clause 5.1.

**11.0 Software use**

In case software is included in the scope of delivery, the Customer shall receive a non-exclusive right to use the delivered software including its documentations. It is provided for use with the designated Delivery Item. Using the software on more than one system is prohibited. The Customer may only reproduce, revise, translate or convert it from the object code to the source code within the extent provided for by law (Sections 69 a et seq. of the German Copyright Act (*UrhG*). The Customer shall undertake not to remove or change manufacturer specifications – in particular copyright notices – without the prior explicit approval of the supplier. All other rights to the software and the documentations, including their copies, remain with the supplier or software supplier. No sublicenses will be granted.

**12.0 Export control reservation**

The fulfilment of a Contract with the Customer is conditional on the fact that neither any obstacles due to national or international foreign trade law regulations nor any embargos and/or other sanctions obstruct the fulfilment.

**13.0 Confidentiality**

13.1 The Customer shall undertake to keep confidential knowhow, trade secrets and other information received from us in connection with the execution of this contract ("**Information**"). The Customer receiving the information is in particular not authorised to forward such information to third parties or grant access to such information to third parties without our prior approval. The Customer shall undertake to commit its employees as well as other individuals who receive access to the information to confidentiality to the same extent.

13.2 The obligation indicated in Clause 13.1 does not include information which a) was already verifiably known to the Customer at the time of the conclusion of the Contract or which were subsequently disclosed by a third party

without violating a confidentiality agreement, any legal provisions or administrative orders; b) are public knowledge at the conclusion of the Contract or which are subsequently disclosed to the public without violating the provisions of this Contract; c) is required to be disclosed due to legal obligations or due to court order or an administrative order.

**14.0 Place of performance, place of jurisdiction and governing law**

14.1 The place of performance for all obligations arising from these Terms or from the Contract, including the rectification, is our registered office in Duisburg, Germany, unless otherwise provided for in these Terms or the Contract.

14.2 The exclusive place of jurisdiction for all legal disputes arising from or in connection with the Terms or the Contract is Duisburg, Germany; however, we are also entitled to sue the Customer at its place of general jurisdiction or at another competent court. This does not apply in case an exclusive place of jurisdiction is determined by law.

14.3 The law of the Federal Republic of Germany under the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (UN sales law / CISG) applies to all legal relations between us and the Customer.

**15.0 Final provisions**

15.1 The effectiveness of any amendments, changes or side agreements to these Terms requires a contractual arrangement between us and the Customer.

15.2 In case any individual provisions of these Terms or of any other agreements between us and the Customer is ineffective, the effectiveness of the remaining provisions of these Terms or of any other agreements shall remain unaffected thereof.