

TERMS AND CONDITIONS OF DELIVERY, PERFORMANCE AND PAYMENT

VULKAN

VULKAN Kupplungs- und Getriebebau B. Hackforth GmbH & Co. KG (herein after referred to as "VULKAN")

Heerstraße 66 | 44653 Herne | Germany

§ 1 APPLICATION OF THE TERMS AND CONDITIONS OF SALE

The following General Terms and Conditions shall apply to all deliveries and services between the company VULKAN and business enterprises. All present and future legal relations between VULKAN and the CUSTOMER shall be governed by the Terms and Conditions of Sale of VULKAN in their respectively valid version. Deviating terms and conditions, especially the purchasing conditions of the CUSTOMER, shall not become part of the contract, unless specifically agreed to in writing. Basic contracts already existing between the parties, if any, shall take priority. They shall be complemented by the present Terms and Conditions of Sale, if no special arrangements are made.

§ 2 EFFECTIVENESS OF CONTRACTS / OFFERS

Orders and supply contracts as well as written guarantees shall not be effective unless and until acknowledged or confirmed by VULKAN in writing. This requirement that all agreements must be in writing to be valid can be waived only by a written agreement. Offers submitted by the company VULKAN are without engagement.

§ 3 PRICES, PAYMENT, SMALLER-THAN-MINIMUM ORDERS, SAMPLES

Deliveries shall be made and services shall be provided at the prices and on the terms and conditions contained in the supply contract / offer or the order acknowledgement of VULKAN respectively. The prices quoted therein shall be binding. The prices are to be understood for delivery ex factory / warehouse of the company VULKAN and are exclusive of the sales tax effective at the time of invoicing, which shall be added to the prices.

All shipments and returns of goods shall generally be made at the cost and risk of the CUSTOMER; this shall also apply concerning the risk assumption, if VULKAN pays the cost of transport or makes the shipment. A reasonable flat rate will be charged for the supply or treatment of samples or smaller-than-minimum orders.

All invoices shall be payable immediately without deduction within 30 days, unless otherwise agreed in written form. If the CUSTOMER fails to make payment on the due date, VULKAN shall be entitled to charge interest on the amount unpaid at a reasonable rate, the applicable minimum rate being, at the discretion of VULKAN, either the customary bank interest rate or the legal interest rate (Article 288 of the German Civil Code (BGB)). Should VULKAN agree to accept bills of exchange or drafts, such bills or drafts will be accepted only on account of performance but not in lieu of performance. VULKAN shall be entitled to revoke at any time the respite granted through the acceptance of drafts and to demand immediate payment. If VULKAN accepts any bill of exchange or draft, it will charge and demand immediate payment in cash of the applicable discounting and collecting charges as of the expiry date of the invoice.

The CUSTOMER shall not have the right to withhold any payment due to claims it may have against VULKAN or to offset such claims against any payment, unless its claim has been acknowledged by VULKAN, is legally valid or is ready for a decision.

§ 4 DELIVERY DATE

Delivery or completion dates agreed shall not be binding, unless expressly stipulated otherwise in the order acknowledgement / in the delivery schedule / in the offer / in the contract. The delivery period shall commence on the day the order acknowledgement is mailed, subject to receipt of all items, documents, approvals and authorizations to be provided by the CUSTOMER and subject to receipt of any advance payment that may have been agreed. If any item to be provided by the CUSTOMER is not made available, or if the item made available is defective in any manner, the delivery period shall be extended by a full month for any part of the month that the item is delayed or defective.

The delivery period shall be deemed to have been observed, if the item of sale has left the factory or has been reported ready for despatch before expiry of the delivery period. The delivery period shall be reasonably extended in the event of any actions related to labour disputes, especially strikes and lockouts and in the event of any unforeseeable circumstances that are beyond the control of VULKAN, provided such circumstances can be proved to have a significant impact on the completion or shipment of the item of sale. This shall apply also if such circumstances occur at subcontractors' plants. Circumstances of this nature shall not be the responsibility of VULKAN, even if they occur during a delay already caused by other reasons. In serious cases, the CUSTOMER shall be notified by VULKAN of the start and end of such circumstances without delay. Any compensation for delays in delivery of less than two months shall be excluded. If any delay exceeds this time limit or if compensation has to be provided for a compelling reason, the following

shall apply:

Should the CUSTOMER suffer any damage due to a delay for which VULKAN is to blame, it shall be entitled – to the exclusion of further claims – to demand compensation. The applicable compensation shall amount to 0.5 % for each full week of delay, with the maximum compensation being limited to 5 % of the value of that part of the total delivery that cannot be used at the time on in the manner stipulated in the contract.

If shipment is deferred by the CUSTOMER's request, the CUSTOMER shall, commencing one week after VULKAN reports the goods to be ready for despatch, be invoiced for the costs of storage, in the event of storage in the works of VULKAN, however at least for a rate of 0.5 % of the invoice amount for each month that the shipment is deferred. VULKAN shall, however, be entitled to dispose of the goods otherwise after setting an appropriate deadline and its unsuccessful expiry and to supply the CUSTOMER within a period adequately extended. VULKAN shall retain all further claims, especially the rights granted under Articles 293 f. (Art. 304) of the German Civil Code (BGB), against which claims all services provided by the CUSTOMER shall be offset. The same shall apply to VULKAN's rights under Articles 280 ff. BGB and its claim to performance.

Observance of the delivery period shall be subject to the performance by the CUSTOMER of its contractual obligations. The delivery period shall commence on the day the order acknowledgement is mailed, subject to receipt of all items, documents, approvals and authorizations to be provided by the CUSTOMER and subject to receipt of any advance payment that may have been agreed. If any item to be provided by the CUSTOMER is not made available, or if the item made available is defective in any manner, the delivery period shall be extended by a full month for any part of the month that the item is delayed or defective.

§ 5 PASSAGE OF RISK AND ACCEPTANCE

The risk in the goods shall pass to the CUSTOMER at the latest when the item has been placed for despatch at VULKAN's premises. This shall apply also in cases where delivery is made in instalments or where VULKAN's responsibility includes further costs or services, e.g. costs of transport, carriage and / or erection. If so requested by the CUSTOMER, VULKAN will insure the shipment at the CUSTOMER's expense against theft, breakage, damage in transit, as well as damage caused by fire or water, and other insurable risks. If delivery is delayed due to reasons attributable to the CUSTOMER, the risk shall pass to the CUSTOMER on the day that the goods are reported to be ready for despatch. However, VULKAN shall, by the request and for the account of the CUSTOMER, effect any insurance that the CUSTOMER may demand.

All items delivered, including items with minor defects, shall be accepted by the CUSTOMER without prejudice to its rights under Article 11. Part shipments are admissible.

§ 6 REFUSAL TO ACCEPT / REFUSAL TO TAKE DELIVERY

Should the CUSTOMER refuse to accept the item of sale, shipment or service, VULKAN may set a reasonable deadline for acceptance or taking delivery. If, within this deadline, the CUSTOMER fails to accept or take delivery of the item of sale, VULKAN shall be entitled, without prejudice to the right for performance of the contract, to cancel the contract or claim damages for non-performance. VULKAN may at all events, even without furnishing proof of the actual damage of loss suffered and without prejudice to its right to claim higher damages for the actual damage or loss suffered, demand fixed compensation of 30 % of the net order value for standard goods and a compensation of 100 % for custom-made-products which cannot be utilised otherwise. The CUSTOMER is at the liberty to prove a lower actual damage.

If acceptance has been agreed or is necessary for a compelling reason, VULKAN shall be entitled to demand that the item of sale be accepted, provided that it has no material defects and is fully functional / operational. Material defects as contemplated by the order acknowledgement are defects that may jeopardize or significantly affect the fitness of the item of sale for the intended purpose. In this event, VULKAN shall propose several possible acceptance dates. The proposal must reach the CUSTOMER no later than one week ahead of the proposed acceptance dates. If none of the proposed acceptance dates is agreed to by the CUSTOMER at least two days before the relevant acceptance date and if the CUSTOMER, in turn, does not propose an alternative date, which should lie within a period of two weeks from receipt of the proposal made by VULKAN, acceptance shall be deemed to have been pronounced.

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§ 7 RETENTION OF TITLE

All deliveries shall be made and all services shall be provided subject to the provisions of this retention-of-title clause. VULKAN shall retain title to the goods delivered until the purchase price and all charges have been fully paid and until all other claims that VULKAN may have against the CUSTOMER under the relevant contract have been settled. If the goods are processed or converted by the CUSTOMER, such processing / conversion shall take place on behalf of VULKAN, which shall consequently be deemed to be the manufacturer of the goods within the meaning of article 950 of the German Civil Code (BGB), thus acquiring property in the intermediate and finished product. If the goods are processed / converted together with other goods not owned by the CUSTOMER, VULKAN shall become the co-owner of the new product in the ratio in terms of value of the goods delivered by VULKAN to the goods delivered by others.

Under any contract signed with VULKAN, the CUSTOMER shall at any time have the revocable right to resell or sublicense the delivered goods within the scope of its regular business activities. By accepting these Terms and Conditions, the CUSTOMER assigns to VULKAN as security, up to the value of the relevant goods delivered, all claims and ancillary rights related to the resale and its business relations with its customers. VULKAN has the right to disclose the purchasers of the CUSTOMER the assigned claims.

VULKAN is entitled but not obliged to insure the delivered goods, for the account of the CUSTOMER, against theft, breakage, damage caused by fire and water and any other type of damages, if the CUSTOMER has not taken out the insurance by itself demonstrably.

The CUSTOMER shall not be entitled to pledge the item of sale or assign it to others as security. In the event of the item of sale being seized or attached or disposed of in any other manner by a third party, the CUSTOMER shall notify VULKAN forthwith. Should VULKAN sustain any damage (e.g. due to loss of right/s) as a result of the CUSTOMER not notifying VULKAN or not notifying VULKAN in good time, the CUSTOMER shall be obliged to provide compensation.

If the CUSTOMER is in breach of the contract, especially if it fails to make payment on the due date, VULKAN shall be entitled, after sending a reminder, to claim back the item of sale and the CUSTOMER shall be obliged to hand out the item of sale. Enforcement of the retention-of-title provisions and seizure of the item of sale by VULKAN shall not be deemed cancellation of contract, provided that the provisions relating to consumer loan agreements (Articles 491 to 498 of the German Civil Code (BGB)) do not apply.

VULKAN undertakes to release the securities it is entitled to upon demand of the CUSTOMER insofar as the realisable value of the security exceeds the claims to secure by more than 20 %. The choice of the securities to be released is incumbent on VULKAN.

§ 8 CLAIMS FOR DAMAGES

The right of the CUSTOMER to claim damages based on fault shall be limited to wilful action and gross negligence on the part of the owners, corporate bodies or executives of VULKAN, careless violation of essential contractual obligations (cardinal obligations), fraudulent non-disclosure of defects, damage culpably caused to a person's life, body or health and, finally, defects in the item of sale of a nature that makes producers liable under the Product Liability Act (Produkthaftungsgesetz) for injury to persons and damage to privately used property.

In the event of a careless violation of essential contractual obligations (cardinal obligations), any claim shall be limited to typically foreseeable, contract-specific damage. Further claims for damages shall be excluded. Any claims against VULKAN, its servants or agents shall be subject to a limitation period of one year from shipment of goods.

§ 9 INDUSTRIAL PROPERTY RIGHTS / COPYRIGHTS / CONFIDENTIALITY, ETC.

All rights in patents, utility model patents, design patents, registered trademarks, advancements and other property rights as well as copyrights relating to the item of sale and the services provided shall remain with the holder of such rights. This shall apply in particular to product names, software products and rights to names and signs.

The contractual partners undertake to treat as a trade secret any commercial and technical details that are not in the public domain and that may be communicated to them during their business relations. Drawings, tools, software packages, patterns, devices, models, templates, designs and other items delivered, used or made available by or to VULKAN shall remain the property of VULKAN. They shall not be handed over or made available to a third party. If such items are specifically manufactured or made for VULKAN, they shall become the property of VULKAN at the time they are manufactured or made. Such items may be reproduced only for the intended purpose and in accordance

with the provisions of the patent, copyright and competition laws.

The CUSTOMER shall impose similar obligations upon its business partners. The CUSTOMER shall not use its business relations with VULKAN for any kind of advertising, unless it has obtained prior approval from VULKAN in written.

§ 10 CONFLICTS WITH THIRD PARTIES

Should any claim be brought against the CUSTOMER by third parties due to direct infringement of industrial property rights including copyrights related to the goods and services supplied by VULKAN, VULKAN shall indemnify the CUSTOMER against any damages that may be awarded against the CUSTOMER or agreed by way of settlement including all court costs and lawyer's fees, subject to the following conditions: In the event of a claim or a warning being made or given by a third party, the CUSTOMER shall notify VULKAN immediately and prior to taking any action to defend the case and/or involving a lawyer, excluding, however, any urgent action that may need to be taken before VULKAN can be notified. Only VULKAN shall be authorised to take action to defend the case, hire lawyers for the purpose of conducting the defence, and/or make representations and / or conduct negotiations. If so requested by VULKAN, the CUSTOMER shall, at the expense of VULKAN, hire a lawyer to conduct the defence. The CUSTOMER shall inform VULKAN immediately and regularly of the development of the matter and shall, in particular, make available any required information and documents. VULKAN shall not be liable in cases where the infringement of a third party right is attributable to a change to the item of sale, or parts thereof, but where the item of sale itself does not infringe a right. Furthermore, VULKAN shall not be liable in cases where the CUSTOMER, after being warned by a third party or after becoming aware of the potential infringement of a right owned by a third party, continues using the relevant item, unless VULKAN has agreed to such use in writing. If it has been established by way of a legally effective decision that the use of the item of sale, if continued, will infringe industrial property rights, including copyrights, owned by a third party or if, in the CUSTOMER's opinion, there is a risk of a law-suit being filed on grounds of infringement of industrial property rights or copyrights, VULKAN may, at its discretion and for its account, either procure for the manner that it will no longer infringe the third party right or at least make infringement less probable. Such action shall not entitle the CUSTOMER in any manner to assert any claims whatsoever against VULKAN.

§ 11 WARRANTY

VULKAN shall initially warrant for defects of the good – at the discretion of VULKAN – by subsequent amendment or replacement. In case of failure of the subsequent compliance, the CUSTOMER can – at its discretion – claim mitigation of the compensation (reduction) or rescinding the contract (rescission). In the event of a minor contrariety to the contract, especially in the case of minor defects, the CUSTOMER shall not have a right to rescission. The CUSTOMER has to notify VULKAN in writing about obvious defects within a period of two weeks after receipt of the goods. Otherwise, the assertion of the claim for warranty is barred. The CUSTOMER has to prove all conditions for the claim, especially the defect itself, the time of assessment of the defect and for the timeliness of the notice of defects. Furthermore, the CUSTOMER does not warranty rights warranty unless it has duly complied with the requirement, as stipulated in Art. 377 of the German Commercial Code (HGB), to inspect the goods and/or to give notice of defects.

In case the CUSTOMER chooses to rescind from the contract due to a deficiency in title and / or a rehibitory defect after failed subsequent compliance, it shall not be entitled to also claim for compensation due to the defect. In the event of the CUSTOMER choosing compensation after failed subsequent compliance the goods shall remain with him, if this is reasonable. Then, the compensation shall be limited to the difference between purchase price and the value of the defective goods. This does not apply, if VULKAN violated the contract fraudulently.

The warranty period shall be one year commencing with delivery / acceptance of the goods / services. The agreed standard and quality of the goods shall exclusively be deemed to be the standard and quality as specified in the relevant manufacturer's product description that forms the basis of the contract. Public statements as well as promotional or advertising messages of the manufacturer or a third party shall not be deemed to be quality specifications of a contractually binding nature.

Should the CUSTOMER receive instructions for erection / installation that contain faults or errors, VULKAN shall be obliged only to provide instructions that are free of faults and error. However, this obligation shall apply only if the faults or error contained in the

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instructions make proper erection / installation impossible. Should any erection or installation problem occur that is attributable to faulty instructions, the CUSTOMER shall notify VULKAN by telephone who will act as its adviser. If required, VULKAN will reimburse the arising telephone costs.

Should any modification or repair made by the CUSTOMER or a third party assigned by the CUSTOMER without the consent of VULKAN turn out to be faulty, VULKAN shall not be liable for the consequences resulting from such modification or repair. In such case, the warranty obligations of VULKAN shall become void altogether, unless the CUSTOMER can prove that the modification or repair is not the cause of the damage or loss.

As a matter of principle, VULKAN will not grant the CUSTOMER any guarantee according to Art. 443 of the German Civil Code (BGB). Guarantees given by a third party shall not be affected hereby. Should VULKAN discontinue the manufacture of goods that the CUSTOMER purchased in the past, VULKAN shall be obliged to stock and supply spare parts for the discontinued goods for a period of eight years from the date when the production is discontinued, it being understood that spare parts of equivalent quality to the original parts may be stocked / supplied instead of the original spare parts..

§ 12 PLACE OF PERFORMANCE AND JURISDICTION

The place of performance in respect of deliveries and services and the place of jurisdiction in respect of all obligations under the contract and all disputes that may arise in connection with the contract shall be the principal place of business of VULKAN or – at the discretion of VULKAN – the place of business of the VULKAN branch office or plant responsible for the deliveries / services. VULKAN shall – at its discretion – also have the right to file a lawsuit at the CUSTOMER's principle place of business or at the place of performance.

The laws of the Federal Republik of Germany shall apply to the exclusion of the United Nations Convention on contracts for the International Sale of Goods (CSIG). The contract language shall be German.

§ 13 REQUIREMENT OF WRITING

Side agreements shall not be valid, unless they are made in writing. Alterations / additions must be in writing to be valid. The requirement that agreements must be in writing shall apply also to the waiver of the requirement.

§ 13 SAVING CLAUSE

Should any provision of these Terms and Conditions of Sale be or become invalid, or should there be any omission in them, the validity of the other provisions shall not be affected thereby. In this case, a valid provision coming as close as possible to what the parties intended shall apply instead of the invalid provision. The same shall be applicable in the event of any omission in the contract.