

TERMS AND CONDITIONS OF SALE



VULKAN Lokring Rohrverbindungen GmbH & Co. KG (hereinafter referred to as „VULKAN Lokring“)

Heerstraße 66 | 44653 Herne | Germany

Article 1 – Application of the Terms and Conditions of Sale

1. The following Terms and Conditions of Sale shall apply to all present and future supplies furnished and services rendered by the company of VULKAN Lokring Rohrverbindungen GmbH & Co. KG to business enterprises, legal persons under public law, or federal, state or communal special funds. All current and future legal relations between VULKAN Lokring and the CUSTOMER shall comply with the respectively valid Terms and Conditions of Sale of VULKAN Lokring. Any deviating terms and conditions, especially the purchasing conditions of the CUSTOMER are contradicted without exception. Such terms shall only become part of the contract if specifically agreed to in writing.
2. Existing framework agreements between the parties shall prevail. The present Terms and Conditions of Sale shall apply subsidiarily where no special regulations have been made in the framework agreements.

Article 2 – Conclusion and type of contracts

1. Orders, delivery contracts as well as potential guarantees have to be confirmed in writing by VULKAN Lokring. This also applies to a waiver of this requirement of written form itself.
2. As regards time, nature and scope of supplies and services as well as relevant prices VULKAN Lokring's written order acknowledgement, if issued, shall be applicable. Minor changes of the supply and services items with respect to design, form and configuration as well as values and data indicated in the description are permissible for technical reasons, provided such changes do not impair the intended use, quality and functionality.
3. Offers by VULKAN Lokring are subject to change.

Article 3 – Prices, Payment, Smaller-than-Minimum Orders, Samples

1. Deliveries and services shall be rendered according to prices and conditions included in VULKAN Lokring's supply contract/offer or its order acknowledgement, respectively. The prices stipulated therein shall be binding.
2. Prices are calculated ex works and from storehouse of VULKAN Lokring. VAT will be added as effective on the date of invoicing.
3. In the event additional or increased fees, taxes or other direct and indirect charges – in particular customs duty, levies, currency adjustments – are incurred in the period between contract conclusion and delivery due to amended rules of law or judicial decisions, VULKAN Lokring shall be entitled to increase its prices accordingly.
4. All shipments and returns of goods shall generally be made at the cost and risk of the CUSTOMER. This shall also apply if VULKAN Lokring pays the cost of transport or makes the shipment.
5. An appropriate lump sum shall be paid for handling or delivery of specimen or small-volume purchases.
6. All invoices shall be payable within 30 days without any deduction, unless expressly agreed otherwise in writing.
7. In the case of delayed payment a default interest shall become due. The amount of said default interest shall be appropriate; however, at VULKAN Lokring's choice, it shall amount to the interest rate customary in banking or to the statutory interest rate (according to §§ 288 and 247 German Civil Code (BGB)). Should VULKAN Lokring agree to accept bills of exchange, drafts or checks, such bills, drafts or checks will be accepted only on account of performance but not in lieu of performance. VULKAN Lokring shall be entitled to revoke at any time the respite granted through the acceptance of drafts and to demand immediate payment. If VULKAN Lokring 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.
8. The CUSTOMER shall not have the right to withhold any payment or offset claims against any payment, unless its claim has been acknowledged by VULKAN Lokring or is legally valid.

Article 4 – Delivery Date

1. 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.
2. 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, and, additionally, by another month.
3. 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 dispatch before expiry of the delivery period.

4. 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 Lokring, 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 Lokring, even if they occur during a delay already caused by other reasons. In serious cases, the CUSTOMER shall be notified without delay by VULKAN Lokring of the start and end of such circumstances. 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 Lokring 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 or in the manner stipulated in the contract.
5. If shipment is deferred by the CUSTOMER's request, the CUSTOMER shall, commencing one week after VULKAN Lokring reports the goods to be ready for dispatch, be invoiced for the costs of storage in the factory of VULKAN Lokring, at least, however, a rate of 0.5 % of the invoice amount for each commenced month the items are kept in storage. VULKAN Lokring 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 deadline adequately extended. VULKAN Lokring shall retain all further claims, especially the rights granted under § 293 et seq. including § 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 Lokring's rights under §§ 280 et seq. BGB and its claim to performance.
6. Observance of the delivery period shall be subject to the performance by the CUSTOMER of its contractual obligations.

Article 5 – Passage of Risk and Acceptance

1. The risk in the goods shall pass to the CUSTOMER at the latest when the items are in the state of readiness. This shall apply also in cases where delivery is made in instalments or where VULKAN Lokring's responsibility includes further costs or services, e.g. costs of transport, carriage and mounting. If so requested by the CUSTOMER, VULKAN Lokring 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.
2. 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 dispatch. However, VULKAN Lokring shall, by the request and for the account of the CUSTOMER, effect any insurance that the CUSTOMER may demand.
3. All items delivered, including items with minor defects, shall be accepted by the CUSTOMER without prejudice to its rights under Article 11.
4. Part shipments are permissible.

Article 6 – Refusal to Accept / Refusal to Take Delivery

1. Should the CUSTOMER refuse to accept the item of sale, shipment or service, VULKAN Lokring 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 Lokring shall be entitled, without prejudice to the right for performance of the contract, to cancel the contract also without setting a deadline and/or claim damages for non-performance. VULKAN Lokring may at all events, even without furnishing proof of the actual damage or loss suffered and without prejudice to its right to claim higher damages for the actual damage or loss suffered, claim for overall compensation amounting to 30 % of the net order value regarding standard goods and amounting to 100 % regarding custom-made products which are not utilisable otherwise. The CUSTOMER is required to explain and produce evidence for a lower damage.
2. If acceptance has been agreed or is necessary for a compelling reason, VULKAN Lokring shall be entitled to demand that the item of sale be accepted, provided that it has no material defects and is functional/operational. Material defects are defects that may jeopardize or significantly affect the fitness of the item of sale for the intended purpose. In this event, VULKAN Lokring shall propose to the CUSTOMER several possible 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 Lokring, acceptance shall be deemed to have been pronounced.

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Article 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 Lokring 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 Lokring 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 Lokring, which shall consequently be deemed to be the manufacturer of the goods within the meaning of § 950 of the German Civil Code (BGB), thus acquiring property in the intermediate or finished product. If the goods are processed / converted together with other goods not owned by the CUSTOMER, VULKAN Lokring shall become the co-owner of the new product in the ratio, in terms of value, of the goods delivered by VULKAN Lokring to the goods delivered by others at the time of processing.
- Under any contract signed with VULKAN Lokring, the CUSTOMER shall at any time have the revocable right to resell the delivered goods within the scope of its regular business activities. By accepting these Terms and Conditions, the CUSTOMER assigns to VULKAN Lokring as security, up to the value of the relevant goods delivered, all claims and ancillary rights related to the resale effected as a result of its business relations with its customers. VULKAN Lokring accepts this assignment. VULKAN Lokring shall be entitled to announce such assignment of claims to the purchasers of the CUSTOMER at any time.
- VULKAN Lokring shall be entitled, but not obliged, to insure, for the account of the CUSTOMER, the delivered goods against theft, breakage, damage caused by fire and water and any other type of damage, unless the CUSTOMER proves that it has arranged for such insurance. The CUSTOMER undertakes to disclose the necessary information therefor upon demand.
- 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 Lokring forthwith. Should VULKAN Lokring sustain any damage (e.g. due to loss of right/s) as a result of the CUSTOMER not notifying VULKAN Lokring or not notifying VULKAN Lokring 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 Lokring shall be entitled, after sending a reminder, to claim back the item of sale and CUSTOMER shall be obliged to deliver the item of sale.
- Enforcement of the retention-of-title provisions and seizure of the item of sale by VULKAN Lokring shall not be deemed cancellation of contract. VULKAN Lokring undertakes to approve the entitled securities on demand of the CUSTOMER insofar as the realizable value of the security exceeds the claims to be secured by more than 20 %. The choice of the securities to be approved is incumbent on VULKAN Lokring.

Article 8 – Liability

- The right of the CUSTOMER to claim damages based on no-fault/strict liability shall be limited to wilful action, gross negligence on the part of the owners, its corporate bodies or executives of VULKAN Lokring, careless violation of material contractual obligations (cardinal obligations), fraudulent non-disclosure of defects, damage culpably caused to a person's life, body or health by VULKAN Lokring, its legal representatives or vicarious agents or defects in sale and services items of a nature that makes producers liable under the Product Liability Act (Produkthaftungsgesetz) for injury to persons or damage to privately used property.
- The liability limit is overall restricted to the amount of 2.000.000,00 € for all damages resulting from one consignment.
- 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 for damages against VULKAN Lokring, its vicarious agents or servants shall be subject to a limitation period of one year from the legal commencement of the limitation period.

Article 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 name and trademark rights.
- 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 Lokring shall remain the property of VULKAN Lokring. They shall not be handed over or made available to a third party. If such items are specifically manufactured or made for VULKAN Lokring, they shall become the property of VULKAN Lokring at the time they are manufactured or made. Such items may be reproduced only in the framework of operational requirements and in accordance with the provisions of the patent, trademark, copyright and competition laws.
- The CUSTOMER shall impose similar obligations upon its contractual partners.
- The CUSTOMER shall not use its business relations with VULKAN Lokring for any kind of advertising, unless it has obtained prior written approval from VULKAN Lokring.

Article 10 – Conflicts with Third-Party Rights

- 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 supplied and/or services rendered by VULKAN Lokring, VULKAN Lokring 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 Lokring 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 Lokring can be notified.
 - Only VULKAN Lokring shall be authorized 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 Lokring, the CUSTOMER shall, at the expense of VULKAN Lokring, hire a lawyer to conduct the defence.
 - The CUSTOMER shall inform VULKAN Lokring immediately and regularly of the development of the matter and shall, in particular, make available without delay any required information and documents.
- VULKAN Lokring 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 Lokring 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 Lokring has agreed to such further 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 lawsuit being filed on grounds of infringement of industrial property rights or copyrights, VULKAN Lokring may, at its discretion and for its account, either obtain the right for the continued use of the item of sale or replace the item of sale or modify it in such a manner that an infringement will no longer exist or at least is less probable. Such action shall not entitle the CUSTOMER in any manner to assert any claims whatsoever against VULKAN Lokring.

Article 11 – Warranties

To the exclusion of any further claims and subject to the provisions of Article 8 VULKAN Lokring shall warrant as follows for defects and deficiencies in title of which it has been properly notified in good time:

- At its sole discretion VULKAN Lokring shall, free of charge, make good defects in or replace so as to be free of defects any supplies and services that turn out to be defective as a result of circumstances occurring prior to the passage of risk. Replaced items shall become the property of VULKAN Lokring.
- The agreed standard, quality and characteristics of the goods shall exclusively be deemed to be those specified in the relevant manufacturer's product description, in particular in VULKAN Lokring's catalogue of products, 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 standard, quality and characteristics specifications of a contractually binding nature.
- VULKAN Lokring shall be informed in writing about obvious defects within two weeks after reception of the goods. Otherwise, warranty claims for such defects shall be excluded. The CUSTOMER bears the full burden to prove that its claims are justified, in particular for the defect itself, for the time of the defect's detection and for the timeliness of the notification of the defect. Additionally, the CUSTOMER is obliged to duly exercise its obligation to inspect and claim according to § 377 German Commercial Code (HGB) in order to obtain a right for warranty.

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4. The CUSTOMER, in consultation with VULKAN Lokring, shall give VULKAN Lokring the opportunity, and allow it the required time, to make all repairs and/or replacements that VULKAN Lokring may consider necessary, failing which VULKAN Lokring shall be relieved of its liability for any consequences arising from this. Only in urgent cases where safety of operation is at risk and/or serious damage must be averted, of which cases VULKAN Lokring must be informed forthwith, shall the CUSTOMER be entitled to remedy the defect, or have it remedied by a third party, and claim compensation from VULKAN Lokring for the required expenses incurred.
5. Of the direct costs incurred through VULKAN Lokring's performance of a repair or delivery of a replacement, VULKAN Lokring shall bear - provided the complaint is justified - the costs of the replacement item including shipment to the original shipping designation. Reasonable dismantling and installation costs shall be remunerated to the extent prescribed by law. Such remuneration shall be limited in height to the gross list price of the item of sale and services.
6. Otherwise, claims raised by CUSTOMER against VULKAN Lokring in toto or in relation to individual components shall be limited to the right of subsequent performance. Only if subsequent performance has failed repeatedly may the CUSTOMER at its discretion claim reduction or rescind from the contract.
7. If the CUSTOMER decides to cancel the contract due to a legal and/or material defect and after rectification has failed, it shall not be entitled to any additional damages because of defects. If the CUSTOMER decides to accept damages after rectification has failed, the goods shall remain at its premises, if reasonable. Thus, the damages shall only cover the difference between the purchase price and the value of the defective goods. This does not apply if VULKAN Lokring caused the breach of contract maliciously.
8. In case the respective defect is of insignificant nature only, the CUSTOMER shall exclusively be entitled to reduce the contract price.
9. Should the CUSTOMER receive an incorrect assembly and/or operation instruction, VULKAN Lokring shall only be obliged to deliver a correct assembly and/or operation instruction. Additionally, this shall only apply if the incorrect assembly and/or operation instruction prevents a correct assembly. In case of assembly and/or operation problems caused by an incorrect assembly and/or operation instruction, the CUSTOMER shall contact VULKAN Lokring by phone to ask for consulting service. VULKAN Lokring shall advise the CUSTOMER and shall refund the respective telephone costs to the CUSTOMER if so required.
10. In particular, warranty shall not be assumed in the following circumstances: Inappropriate or improper use, faulty erection/installation, in particular erection/installation not reflecting state-of-the-art techniques, faulty start-up and/or improper use by the CUSTOMER or third parties, natural wear, faulty or negligent treatment, improper maintenance, unsuited utilities, deficient civil work, unsuited building ground, chemical, electrochemical or electric effects, unless such effects are attributable to VULKAN Lokring. Furthermore, warranty shall also be excluded for consumables, normal wear and damage due to inappropriate storage of the products, as well as for detrimental product changes not attributable to production deficiencies but to natural ageing processes to which the products are subject.
11. In principle, the CUSTOMER does not receive any guarantees as defined by law from VULKAN Lokring. This does not apply to guarantees issued by third manufacturers.
12. Should any modification or repair made by the CUSTOMER or a third party without the prior consent of VULKAN Lokring turn out to be faulty, VULKAN Lokring shall not be liable for the consequences resulting from such modification or repair. In such a case, the warranty obligations of VULKAN Lokring shall become void altogether, unless the CUSTOMER can prove that the modification or repair is not the cause of the damage or loss.
13. The time limit for the warranty for all supplies and services shall be one year starting with the beginning of the legal limitation period.
14. The replacement and repair shall be warranted for six months or until the expiry date of the warranty originally granted for the item of sale, whichever is later.

Article 12 – Place of Performance and Jurisdiction

1. The laws of the Federal Republic 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.
2. VULKAN Lokring agrees upon the following with its contractual partners resident in the European Union as concerns its respective borders: The place of performance in respect of supplies and services and the place of jurisdiction in respect of all obligations under and disputes that may arise in connection with the contract shall be the principal place of business of VULKAN Lokring or – at the discretion of VULKAN Lokring – the place of business of the VULKAN Lokring branch office or plant responsible for the supplies / services. VULKAN Lokring shall – at its discretion – also have the right to file a lawsuit at the CUSTOMER's principle place of business or at the place where services are rendered or deliveries are made.
3. VULKAN Lokring agrees upon the following with its contractual partners resident outside the European Union as concerns its respective borders: Any disputes arising from or in connection with the respective contractual relationship as well as these Terms and Conditions and their coming into existence shall be subject to final settlement according to the Arbitration Rules of the International Chamber of Commerce, adjudicated by one or several arbitrators appointed according to these Rules.

Article 13 – Requirement of Writing

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

Article 14 – Saving Clause

1. 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.
2. 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.