

TERMS OF DELIVERY, SERVICE AND PAYMENT

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

Heerstraße 66 | 44653 Herne | Germany

SECTION 1 APPLICATION OF THE TERMS OF DELIVERY AND SERVICE

1. The Terms of Delivery and Service below apply to all - even future - deliveries and services provided by VULKAN Lokring (in the national and international course of business) to companies, legal persons under public law, and separate estates under public law (hereinafter: „PRINCIPAL“), even if they are not specifically referenced in later contracts. Any contradictory or additional provisions or provisions that are contrary to these Terms of Delivery and Service, in particular PRINCIPAL'S conditions of purchase, shall only become part of the contract if they are expressly agreed upon in writing. These Terms of Delivery and Service apply even if VULKAN Lokring delivers to PRINCIPAL without reservation, fully aware of its contradictory or deviating terms.
2. Any master agreements concluded between the parties shall have priority. Unless specific provisions are made, they are appended by these Terms of Delivery and Service.

SECTION 2 CONCLUSION AND FORM OF CONTRACTS

1. Offers and cost estimates prepared by VULKAN Lokring are subject to change without notice and are non binding unless they are specifically referred to as binding. The written form requirement itself may only be waived by written agreement.
2. For the time, type, and scope of the deliveries and services as well as the respective price, the written order confirmation from VULKAN Lokring, if one was issued, is authoritative. Minor changes to the object of delivery and service in the design, form, and configuration as well as the values provided in the description for technical reasons are permitted, if these changes do not impair the intended use, the quality, and the functionality.
3. Orders and contracts for delivery as well as any warranty declaration require the written confirmation of VULKAN Lokring to be valid. The written form requirement itself may only be waived by written agreement. Offers made by VULKAN Lokring are subject to change without notice.

SECTION 3 PRICES, PAYMENTS, SHORTFALL QUANTITIES, SAMPLES

1. The deliveries and services are provided at the prices and conditions stated in the order confirmation of VULKAN Lokring. The prices stated therein are binding.
2. The prices are from the VULKAN Lokring plant (ex works). Added to them is the value added tax applicable at the time of invoicing.
3. If more than four months pass between the conclusion of the contract and the delivery and, during this period, additional or increased charges, taxes, or other direct and indirect expenses, in particular customs duties or levies arise due to amended legal norms or legislation, VULKAN Lokring is entitled to demand a respectively higher price. PRINCIPAL'S justified interests must be appropriately considered in this regard. The price-courtconfirmed changing factors must be substantiated to PRINCIPAL upon demand.
4. A commensurate flat fee applies to the processing or delivery of samples or shortfall quantities.
5. Unless otherwise agreed upon in writing, all invoices are payable within 30 days without discount. Payment is deemed as rendered when VULKAN Lokring is able to dispose of the amount.
6. In the event of a late payment, default interest in a commensurate amount but at least, at the discretion of VULKAN Lokring, in the amount of the customary banking or statutory interest (Sec. 288, 247 of the German Civil Code (Bürgerliches Gesetzbuch - BGB)) becomes payable. The assertion of further damages remains reserved. If VULKAN decides to accept bills of exchange, this is only done on account of performance and not instead of performance. VULKAN Lokring has the right to revoke the forbearance provided by the acceptance of the bill of exchange at any time and demand immediate payment. If bills of exchange are accepted, the bank's discounts and collection charges are calculated from the date the invoice expires and are immediately payable in cash.
7. Any counterclaims PRINCIPAL may have will only entitle PRINCIPAL to a set-off and the assertion of a right of retention, if they were upheld by a court of law or if they are undisputed. PRINCIPAL may only assert a right of retention, if its counterclaim is based on the same contractual relationship.
8. VULKAN Lokring is entitled to execute any outstanding deliveries or services only in return for payment in advance or the provision of security, if circumstances become known after the conclusion of the contract that may significantly decrease Principal's creditworthiness and which endanger the payment of open receivables of VULKAN Lokring by PRINCIPAL relating to the respective contractual relationship. This applies accordingly, if PRINCIPAL refuses to pay open receivables of VULKAN Lokring, or does not pay them, and no undisputed or court confirmed objections exist against the recei-

vables of VULKAN Lokring.

9. In deviation from Sec. 195 BGB, the claims of VULKAN Lokring for payment of the purchase price will become time-barred in five years.

SECTION 4 PERIOD OF DELIVERY

1. Periods of delivery must be agreed upon in the written form. Periods of delivery are non-binding, unless they are expressly specified as binding.
2. The period of delivery begins when the order confirmation is mailed, but not prior to the provision of the items, documents, permits, authorisations and the receipt of a down payment that was agreed on and the timely and proper fulfilment of any other participatory actions by PRINCIPAL. If components to be provided by PRINCIPAL are not provided at the time agreed upon or not in a defect-free manner, the period of delivery is extended by one month for each started month plus another month.

SECTION 5 RISK TRANSFER AND ACCEPTANCE

1. Deliveries and returns are made from the VULKAN Lokring plant (ex works) and at the expense and risk of PRINCIPAL. The risk of accidental loss or accidental deterioration transfer to PRINCIPAL at the latest when VULKAN Lokring makes the goods available at the place of delivery or hands them over to the shipper. This applies as well when partial deliveries are made or VULKAN Lokring has assumed other costs or services such as shipping costs or deliveries and/or installation. At the request of PRINCIPAL, VULKAN Lokring will insure the shipment at PRINCIPAL'S cost against theft, breakage, transport, fire and water damage, as well as against other insurable risks.
2. If the shipment is delayed for circumstances that are in the sphere of responsibility of PRINCIPAL, the risk transfers to PRINCIPAL as of the date on which readiness for shipment has been reported; VULKAN Lokring is, however, required to obtain the insurances requested by PRINCIPAL at the request and cost of PRINCIPAL.
3. Notwithstanding the rights according to section 11, PRINCIPAL shall accept the objects delivered if they have minor defects. PRINCIPAL is required to accept goods, even if quantity of the goods made available deviates up to 5% or was delivered slightly ahead of schedule.
4. Partial shipments are permitted.

SECTION 6 REFUSAL TO TAKE DELIVERY / ACCEPTANCE REFUSAL

1. If PRINCIPAL unjustly refuses to accept the contractual object, the delivery, or the service, VULKAN Lokring may set a reasonable deadline for the taking of delivery or acceptance. If PRINCIPAL has not taken delivery or accepted the contractual object within the deadline provided, VULKAN Lokring may, notwithstanding the right to contractual fulfilment, withdraw from the contract or demand damages for non-fulfilment. If VULKAN Lokring does not demand contractual fulfilment, VULKAN Lokring is, in any case, even without having to demonstrate the actual damages incurred and notwithstanding the option to assert higher actual damages, entitled to flat-rate damages in the amount of 30% of the net order value for standard goods and in the amount of 100% for customised goods that cannot be liquidated otherwise. PRINCIPAL has the right to demonstrate and prove lower actual damages.
2. If acceptance has been agreed on or is required, VULKAN Lokring is, in any event, entitled to demand acceptance if no major defects exist any longer and operational reliability is guaranteed. Major defects are defects that challenge or significantly impair efficiency. In this case, VULKAN Lokring must propose several possible acceptance dates to PRINCIPAL. If PRINCIPAL does not accept any of these acceptance dates proposed at least two days prior to such a date, and if PRINCIPAL does not propose any other date either that lies within two weeks from the receipt of the proposal of VULKAN Lokring, acceptance is deemed as having been declared.

SECTION 7 RESERVATION OF TITLE

1. All deliveries and services are rendered subject to a reservation of title. Until the purchase price, fees and all other claims of VULKAN Lokring against PRINCIPAL from the ongoing business relationship have been paid in full, the goods delivered remain the property of VULKAN Lokring.
2. For the duration of the retention of title, PRINCIPAL is required to treat the goods subject to a retention of title with due care. PRINCIPAL is, in particular, required to insure the goods at sufficient reinstatement value at its own expense against damages caused by fire, water, and theft. Principal hereby assigns to VULKAN Lokring all indemnification claims from this

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insurance. VULKAN Lokring hereby accepts the assignment. Should the assignment not be permitted, PRINCIPAL hereby irrevocably instructs its insurer to make any payments to VULKAN Lokring only. Any further claims by VULKAN Lokring remain unaffected. Upon request, PRINCIPAL must furnish proof that an insurance contract was concluded.

3. If PRINCIPAL processes or uses the goods by combining or mixing them with other items, the processing/use is performed on behalf of VULKAN Lokring, who is therefore considered the manufacturer as defined by Sec. 950 BGB and acquires the ownership of the intermediate or final product. When processed with other goods PRINCIPAL does not own, VULKAN Lokring acquires joint ownership of the new goods in relation to the value of the goods provided by VULKAN Lokring and the value of the thirdparty goods at the time of processing.
4. PRINCIPAL is revocably entitled at any time to further process the goods delivered and to relicense them in the context of the agreement made in the process of regular business operations. As a matter of precaution, PRINCIPAL hereby assigns to VULKAN Lokring all claims and ancillary rights associated with the resale and the business relationship with its customers in the amount of the value of the goods delivered. VULKAN Lokring hereby accepts the assignment. VULKAN Lokring is authorised to inform the customers of PRINCIPAL of the assignment of claims at any time. If the goods that are subject to a retention of title are sold together with goods that are not delivered by VULKAN Lokring, the claims based on the resale is assigned in relation to the value of the goods that are subject to a retention of title and the other goods sold. Should an assignment not be permitted, PRINCIPAL hereby irrevocably instructs its thirdparty debtors to make any payments to VULKAN Lokring only.
5. PRINCIPAL may neither pledge the object of delivery nor assign it as collateral. In the event of an attachment or other dispositions made by a third party, PRINCIPAL must inform VULKAN Lokring immediately. Should VULKAN Lokring suffer damages because the notification did not take place or was late (e.g. the loss of a right), PRINCIPAL shall be required to reimburse VULKAN Lokring.
6. Should PRINCIPAL act contrary to contract, in particular in the event of a default in payment, VULKAN Lokring is entitled to the goods following a warning and PRINCIPAL is required to surrender said goods.
7. The assertion of the retention of title and attachment of the object of delivery by VULKAN Lokring do not constitute a withdrawal from the contract. VULKAN Lokring undertakes to release any security VULKAN Lokring is entitled to at the request of PRINCIPAL as far as the realisable value of the security exceeds the claims to be secured by more than 10%. VULKAN Lokring has the right to choose which security to release.

SECTION 8 LIABILITY

1. VULKAN Lokring is fully liable, regardless on what legal grounds, in the event of a breach of a warranty or an injury to life, body, or health. The same applies to intent and gross negligence by governing bodies and executives. The liability for simple ancillary agents (Sec. 278 BGB) is excluded to the extent permitted by law.
2. Subject to section 8 no. 1, VULKAN Lokring is only liable for slight negligence if cardinal duties were breached. Cardinal duties are those without which a proper performance of the contract would not be possible and the fulfilment of which the contracting party regularly relies and may rely on.
3. Regarding the nonadherence to a period of delivery, the liability of VULKAN Lokring is, subject to section 8 no. 1, limited to 5% of the net price that was agreed on regarding damages that PRINCIPAL incurs due to the delay. The contracting parties have the right to assert further damages and to show lower damages. Drawings, tools, software, forms, devices, models, templates, samples, and similar items that are provided, used, or made available by or for VULKAN Lokring are and remain the property of VULKAN Lokring. They may not be provided to unauthorised third parties or made available otherwise. If the aforementioned objects are produced for VULKAN Lokring, they become the property of VULKAN Lokring at the time these are produced or manufactured. The duplication of such objects is only permitted in the context of operational requirements and the provisions under patent law, trademark law, copyright and competition law.
4. The contracting parties of PRINCIPAL must be obligated by the same accordingly.
5. PRINCIPAL may only reference the business relationship with VULKAN Lokring in its advertising with prior written approval.

SECTION 9 PROTECTIVE RIGHTS / COPYRIGHTS / CONFIDENTIALITY ETC.

1. All rights to patents, utility and design patents, trademarks, configurations, and other protective rights as well as copyrights relating to the contractual object and services

remain with the holder of the rights. This applies in particular to product designations, software, and to name and trademark rights.

2. The contracting parties undertake to treat all commercial and technical details that are not obvious and that they become privy to due to the business relationship as a business secret.

SECTION 10 COLLISION WITH THIRD-PARTY RIGHTS

1. If PRINCIPAL, due to a direct infringement of protective rights, including property rights, is held responsible by third parties due to deliveries and/or services provided by VULKAN Lokring, VULKAN Lokring hereby indemnifies and holds PRINCIPAL harmless from any damages it is ordered to pay or that are specified in a settlement agreement as well as from any court and attorney fees, but only under the following conditions:
 - a) PRINCIPAL informs VULKAN Lokring immediately when being held responsible or warned by third parties, without first having taken any defensive steps and/or having contacted an attorney. Excepted from this are ad hoc steps that must be taken before VULKAN Lokring can be informed.
 - b) Only VULKAN Lokring is entitled to take defensive steps and to retain attorneys for the performance of defensive steps and/or to issue statements and/or engage in other negotiations. If so requested by VULKAN Lokring, PRINCIPAL will retain an attorney at the expense of VULKAN Lokring.
 - c) PRINCIPAL notifies VULKAN Lokring immediately and continuously about the matter and, in particular, promptly provides the necessary information and documents.
2. VULKAN Lokring is not liable if the infringement of a thirdparty right is based on a modification of the contractual object or parts thereof, provided the contractual object itself does not infringe any rights. Furthermore, VULKAN Lokring is not liable in the event PRINCIPAL has engaged in further acts of use after having been warned by a third party or having become aware of a potential infringement of thirdparty rights unless VULKAN Lokring has approved further acts of use in writing.
3. In the event that it is found by a court of law that any further use of the contractual object infringes thirdparty protective rights, including copyrights, or, in the opinion of PRINCIPAL, the risk of a protective right or copyright lawsuit exists, VULKAN Lokring may, at its own cost and discretion, either provide PRINCIPAL with the right to further use the contractual object or replace the contractual object or modify it in such a way that an infringement no longer exists or that it is at least less likely. These types of steps do not entitle PRINCIPAL to assert any claims - regardless of what type - against VULKAN Lokring.

SECTION 11 WARRANTY

For material defects and defects of title relating to the delivery or service, which were duly objected to in a timely manner, VULKAN Lokring warrants, to the exclusion of other claims, and notwithstanding section 8, as follows:

1. At its discretion, VULKAN Lokring will either rectify or replace all deliveries or services that were found to be defective due to a circumstance that existed at the transfer of risk free of charge. The replaced parts become the property of VULKAN Lokring.
2. The parties agree that the properties and condition of the goods are only specified in the property and condition information in the specific product description of the manufacturer that the contract is based on, in particular the product description in the product catalogue of VULKAN Lokring. Public comments, promotions or advertising of the manufacturer or third parties, however, do not constitute contractual information about the properties and condition of the goods.
3. The warranty rights of PRINCIPAL are subject to the condition that PRINCIPAL has met its statutory inspection and rejection duties (Sec. 377, 381 HGB), that PRINCIPAL has, in particular, immediately inspected the goods delivered and promptly informed VULKAN Lokring in writing of any obvious defects and defects that were found during such an inspection. PRINCIPAL must report any hidden defects to VULKAN Lokring promptly after they are uncovered. The notification is considered prompt if it is made within eight workdays. The date on which the notification is received by VULKAN Lokring is authoritative for the compliance with the notification deadline. If PRINCIPAL fails to duly inspect the goods and/or report defects, VULKAN Lokring is not liable for the defect. PRINCIPAL must describe the defects in writing in its notification sent to VULKAN Lokring. PRINCIPAL bears the full burden of proof for all claim requirements, in particular for the defect itself, for the point in time the defect was noted, and for the timeliness of the notice of defect.
4. The supplementary performance claims do not pertain to minor deviations that PRINCIPAL must tolerate.

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5. Upon having communicated with VULKAN Lokring, PRINCIPAL must provide the time and opportunity required for the performance of all rectifications and/or replacements that VULKAN Lokring deems necessary; otherwise, VULKAN Lokring is released from the liability and the resulting consequences. Only in urgent cases, when the operational safety is at risk or in order to avert disproportionate damage, in the event of which VULKAN Lokring must be informed immediately, PRINCIPAL has the right to remedy the defect itself or to have it remedied by third parties and to request from VULKAN Lokring reimbursement of the expenses that were necessary.
6. If a notice of defect is made without justification, VULKAN Lokring is entitled to demand from PRINCIPAL reimbursement of the expenses that were incurred unless PRINCIPAL can show that it is not at fault for the unjustified notice of defect.
7. If the complaint is found to be just, VULKAN Lokring will bear the direct costs arising from the rectification or replacement made by VULKAN Lokring, the costs for the replacement part including shipment to the original shipping address. If the goods are not at the place of delivery, PRINCIPAL will bear all additional costs incurred by VULKAN Lokring in the remediation of the defect due to this fact, unless the relocation to another place corresponds to contractual use.
8. In all other regards, the claims of PRINCIPAL against VULKAN Lokring as a whole or regarding individual parts are limited to a right to supplemental performance. Only if the supplementary performance is unsuccessful, PRINCIPAL may either, at its discretion, reduce the compensation amount or withdraw from the contract.
9. If PRINCIPAL opts to withdraw from the contract due to a defect of title and/or material defect following failed supplementary performance, PRINCIPAL is not entitled to additional damages in connection with the defect. If PRINCIPAL opts for damages following failed supplementary performance, the goods will remain with PRINCIPAL, if this is a reasonable expectation. The damages are then limited to the difference between the purchase price and the value of the defective item. This does not apply if VULKAN Lokring caused the contractual breach in bad faith.
10. If PRINCIPAL receives defective instructions for assembly and/or operation, VULKAN Lokring is only required to provide instructions for assembly and/or operation that are free from defect, and only if the defect in the instructions for assembly and/or operation prevents a proper assembly and/or operation. In the event of assembly and/or operating problems that are due to defective instructions for assembly and/or operation, PRINCIPAL must contact VULKAN Lokring by phone, who will then consult and assist. If so requested, VULKAN Lokring must reimburse the resulting telephone costs.
11. No liability is assumed in particular in the following cases: unsuitable or improper use, defective assembly, and in particular an assembly that is not according to the state of technology, startup and/or improper use by PRINCIPAL or a third party, natural wear and tear, incorrect or negligent treatment, improper maintenance, unsuitable equipment, defective construction work, unsuitable subsoil, chemical, electrochemical, or electrical influences, unless VULKAN Lokring is responsible for them. No liability is assumed either for consumables, normal wear and tear as well as damage caused by an improper storage of the product, as well as for negative changes in the products that are not due to production defects, but to the natural ageing process of the products.
12. As a principle, VULKAN Lokring does not grant PRINCIPAL any warranties in the legal sense. Any warranties by thirdparty manufacturers remain unaffected by this.
13. Any improper changes made or repair work performed by PRINCIPAL or a third party commissioned by PRINCIPAL without the prior approval of VULKAN Lokring invalidate any liability for the resulting consequences. In these cases, VULKAN Lokring has no warranty obligation whatsoever, unless PRINCIPAL can show that the changes or repair work cannot have been the cause of the damage.
14. The warranty period begins one year from the start of the statutory limitation period.
15. The warranty period for the replacement part and rectification is six months, but it is in effect at least until the expiry of the original warranty period for the item of delivery.

SECTION 12 PLACE OF FULFILMENT AND JURISDICTION

1. The law of the Federal Republic of Germany applies under exclusion of the United Nations Convention of Contracts for the International Sale of Goods (CISG). The contractual language is German.
2. The following is agreed on with contracting parties in the European Union in its respective composition: The place of fulfilment for deliveries and services as well as the place of jurisdiction for all liabilities and disputes resulting from the contractual relationship is the principal seat of VULKAN Lokring or, at its discretion, the location of its branch office responsible for the delivery/service. VULKAN Lokring may also opt to file an action at the principal seat of PRINCIPAL or at the place of fulfilment.
3. The following is agreed on with contracting parties outside the European Union in its respective composition: All disputes arising from and in connection with the respective contractual relationship on the basis of these terms of business and its conclusion will be conclusively ruled on in accordance with the rules of arbitration of the International Chamber of Commerce (ICC) by one or more arbiters duly appointed according to these rules.

SECTION 13 WRITTEN FORM

Any side arrangements only become effective if they are made in writing. Amendments and/or addenda require the written form. This applies also to any waiver of the written form requirement.

SECTION 14 SEVERABILITY CLAUSE

1. Should any of the provisions contained in these terms be or become invalid, or should the terms contain a loophole, this shall not affect the legal validity of the remaining provisions contained herein.
2. Instead of the invalid provision, a valid provision shall be deemed as agreed upon that comes closest to the will of the parties; the same applies in the event of a loophole.