

# VBG GROUP TRUCK EQUIPMENT GMBH

## General Terms and Conditions of Sale and Delivery

### 1. General information

- 1.1 The following terms and conditions of sale and delivery apply to all our sales. Any terms and conditions of purchase or general terms and conditions of delivery of the Buyer that conflict with these Terms and Conditions shall not be binding on us, even if the Buyer bases its order on them and we do not expressly object to their content.
- 1.2 This shall also apply if the buyer excludes the effectiveness of deviating conditions in his conditions. The fulfilment of the service by us also does not constitute tacit acceptance of deviating conditions. Instead of contradictory GTC, the statutory provisions shall apply.
- 1.3 Our General Terms and Conditions of Sale and Delivery shall also apply to all subsequent transactions, even if they are not referred to again when they are concluded.
- 1.4 Collateral agreements as well as amendments and supplements to the contract and our General Terms and Conditions of Sale and Delivery must be made in writing.

### 2. Offer, acceptance

- 2.1 Our offers are always subject to change until they are accepted. We reserve the right to make improvements or changes to the design or construction of our products.
- 2.2 Our cost estimates, invoices and other offer documents shall remain our property; we alone shall be entitled to the copyright utilisation rights thereto. They may not be reproduced or passed on without our consent.
- 2.3 If products of an older series or design are ordered from us (e.g. according to an older spare parts list), we are not obliged to inform the buyer that these products may no longer comply with the latest general technical standards and regulations.
- 2.4 Orders shall only be deemed accepted if they have been confirmed by us in writing.

### 3. Prices

- 3.1 Unless otherwise agreed in writing, the prices stated in our price lists, offers, order confirmations and invoices are exclusive of statutory VAT, exclusive of packaging and ex works Krefeld (EXW). Packaging is charged separately at cost price and is non-returnable.
- 3.2 In the case of deliveries and part deliveries which are agreed to be made later than four months after the date of the order confirmation, the sales price valid at the time of delivery shall apply.

### 4. Delivery

- 4.1 In the event of force majeure, operational disruptions, material shortages or other extraordinary events for which we are not responsible and which make delivery impossible or significantly more difficult, we may restrict or discontinue delivery for the duration of the hindrance or withdraw from the contract without the buyer being entitled to claims for damages.
- 4.2 Our products are subject to statistical quality control if they are manufactured in series. Unless otherwise agreed in writing, the test plan for the "single random sample attribute test AQS" in accordance with the guidelines of the Committee for Economic Production (AWF) shall apply to the acceptance of the delivery.
- 4.3 We accept no liability for compliance with delivery deadlines. Claims for damages by the buyer due to delayed delivery, even after the expiry of any period of grace granted to us, are excluded. This shall not apply if we are compulsorily liable due to intent or gross negligence.
- 4.4 Partial deliveries are permissible. In the case of long-term supply contracts, each partial delivery shall be deemed a separate transaction. If we are in default with the delivery of a call-off or a partial quantity or if performance becomes impossible in this respect, the buyer shall be entitled to withdraw from the entire contract under the general statutory conditions; however, claims for damages due to non-fulfilment of the entire contract shall be excluded.

### 5. Dispatch

- 5.1 Shipment shall be at the risk of the purchaser. For all deliveries, the risk shall pass to the Buyer upon delivery of our product to the forwarding agent, the carrier or the person otherwise designated to carry out the shipment.

5.2 We may choose the means of packaging and transport as well as the dispatch route, to the exclusion of any liability, unless the buyer makes a determination on this in good time before the expiry of the delivery period.

## **6. Payment**

6.1 All invoices are payable net within 30 days of delivery and are due after 30 days even without a reminder. Payments may only be made in the agreed currency. Bills of exchange and cheques shall only be accepted on account of payment and shall only be deemed payment after they have been honoured.

6.2 Offsetting against counterclaims of any kind is excluded unless the counterclaim is undisputed or has been recognised by declaratory judgement. In deviation from the provisions of §§ 366, 367 BGB and any instructions of the buyer, we are entitled to determine which claims have been fulfilled by the buyer's payment.

6.3 After the due date of the invoice claim, we are entitled to charge the purchaser interest on arrears at a rate of 5% above the base rate and, if the purchaser is not a consumer, at a rate of 9% above the base rate, plus VAT in each case. The interest is due immediately.

## **7. Default**

7.1 If the buyer does not comply with the agreed terms of payment, in particular if he defaults on a payment in whole or in part, all existing payment obligations towards us, including those from other contracts, shall become due immediately, irrespective of the term of any bills of exchange accepted. The same shall apply if the purchaser suspends payments, if the opening of judicial composition or bankruptcy proceedings against his assets is applied for or decided, as well as if other circumstances become known which reduce his creditworthiness.

7.2 If the Buyer is in default of payment, we may, without prejudice to our other statutory rights, refuse further deliveries under this or any other contract or make them dependent on advance payment or the provision of security.

## **8. Retention of title**

8.1 Our products are delivered subject to retention of title and remain our property until all our claims arising from the business relationship have been paid in full.

8.2 The Buyer may process and/or sell the products in the ordinary course of business. However, he is not authorised to pledge the products or to assign them as security. The buyer must inform us immediately of any seizure or other access or claims by third parties. He must immediately take all measures necessary for the cancellation and defence of such seizures and claims. In addition, he must support us in every way in exercising our rights.

In the event of resale, the purchaser is obliged to retain our title. He hereby assigns to us in advance his claims arising from any contract of sale until all claims to which we are entitled against him have been settled. The purchaser must inform the buyer of the assignment of his claim to us, unless we have released him from this obligation in writing. We are authorised at any time to inform the purchaser of the assignment of the purchaser's claims against us.

8.3 If the buyer does not properly fulfil his payment obligations and the other obligations arising from the retention of title, his right of ownership of the products shall end and we shall be entitled to demand immediate surrender, excluding all objections and defences. Unless we expressly declare otherwise, however, taking back the goods shall not constitute a cancellation of the contract, but shall merely serve to secure our claims. The buyer remains obliged to fulfil the contract. In the event that the goods are taken back, irrespective of whether or not cancellation of the contract is declared, the buyer shall bear the costs of the return shipment.

8.4 The retention of title shall not lapse if our claims are included in a current invoice and the balance is recognised.

8.5 We are obliged to relinquish the retention of title at the buyer's request to the extent that the invoice value of the products stored by the buyer and delivered by us exceeds our claim by more than 20%.

## **9. Guarantee**

9.1 If one of our products has a defect for which we are responsible or if it is defective or unusable as a result of a material, design or construction fault, we shall, at our discretion, deliver a replacement free of charge or rectify the defect. If the replacement delivery or repair is also defective, the buyer may, at his discretion, demand an appropriate price reduction or cancellation of the contract. Any further claims of the buyer against us and our vicarious agents, in particular claims for compensation for damage not caused to the delivery item, are excluded. This does not apply if we are liable due to intent or gross negligence or due to the absence of warranted characteristics.

- 9.2 The warranty obligation pursuant to Section 9.1 shall end vis-à-vis a consumer two years after delivery in the case of new items and one year after delivery in the case of used items. We provide a warranty to companies that new goods are free of defects for a period of one year from delivery. Liability for material defects in used goods is excluded here.
- 9.3 Defects in our products must be reported to us in writing without delay, namely obvious defects within one week of receipt of the consignment at the latest and hidden defects within one week of their becoming recognisable at the latest. If this is not done, any warranty is excluded.  
The statutory rules apply with regard to the burden of proof.  
Complaints about partial deliveries do not entitle the buyer to refuse fulfilment of the entire contract.
- 9.4 We are not liable for claims by third parties due to patent, utility model or trade mark infringements by the delivered goods.

## **10. Data processing**

Customer data is recorded centrally in our company and used in accordance with the GDPR insofar as this is necessary for the proper fulfilment of the contract.

## **11. Severability clause**

Should one or more provisions of these General Terms and Conditions of Sale and Delivery be or become invalid, this shall not affect the validity of the remaining provisions. The contracting parties undertake to replace the invalid or unenforceable provision with a valid contractual provision that comes as close as possible to the economic purpose of the provision to be replaced.

## **12. Place of fulfilment, place of jurisdiction, law**

- 12.1 The place of fulfilment for the mutual services is Krefeld. In the event of disputes, including those relating to the validity of the contract or these General Terms and Conditions of Sale and Delivery, the place of jurisdiction shall be Krefeld. We are also entitled to sue the buyer at his general place of jurisdiction.
- 12.2 The legal relationship between us and the Buyer shall be governed solely by the laws of the Federal Republic of Germany, to the exclusion of any other national laws. The application of the CISG is excluded.