



## **Terms and Conditions of Purchase**

### **§ 1 – Applicability**

1. The following terms and conditions only apply to companies in the sense of § 310 BGB (German Civil Code).

2. The following terms and conditions apply to all our contracts and orders and to all deliveries and other services procured by us save they have not been amended or excluded by our explicit written consent. They also apply specifically should our contractual partner render his deliveries and services to our knowledge on different terms and conditions. The general terms and conditions of business of our contractual partner only apply should we confirm them in writing.

3. Our terms and conditions also apply to all future contracts and orders, even if our contractual partner was not notified of their applicability again in connection with our order.

### **§ 2 – Proposal and conclusion**

1. Should our contractual partner not accept our order within one week of receipt, we are no longer bound to the order.

2. All our orders, collateral agreements and assurances are only binding if effected in writing.

3. All agreements between our contractual partner and us are to be set forth in writing on conclusion of the contract. All agreements – including those made later – only become effective with our written confirmation; the authorization granted to our staff or representatives is restricted in this regard.

4. Commercial letters of confirmation from our contractual partner do not, even without our rejection, mean that a contract differing from our order and other written declarations comes into being.

### **§ 3 – Written form**

Where these terms and conditions require the written form, this is also fulfilled if the corresponding declarations are transmitted by facsimile or e-mail. A written agreement shall also be deemed as having come into existence should we and our contractual partner each submit declarations with matching contents in writing.

### **§ 4 – Price, Payment**

1. The agreed price includes value added tax, packaging and free delivery to our premises.

2. We only pay after receipt of an invoice that states our order and article number.

3. We pay within 14 days after receipt of delivery and correct and proper invoice less 3% discount for early payment or within 30 days after receipt of delivery and invoice without deductions.

### **§ 5 – Offsetting, right of retention**

We are in any event entitled to offset against any counterclaims due to us under the statutory conditions and to exercise our right of retention.

### **§ 6 – Delivery and passage of risk**

The risks regarding performance and price only pass over to us in any event on receipt of the goods and services by us or at a receiving point named by us.

### **§ 7 – Delivery dates, calls**

1. Agreed delivery dates and periods are binding. Adherence is based on receipt of the goods by us.

2. Our call-offs become binding at the latest if our contractual partner does not contradict them within 10 days of receipt.

3. Our contractual partner must advise us in writing of delays in delivery, stating the reasons and the expected duration, as soon as he expects a delay in delivery.

4. Should delivery be delayed by more than a month due to force majeure, we may withdraw from the contract following fruitless expiry of a further deadline of at least two weeks set by us.

### **§ 8 – Dispatch, documents**

1. The deliveries of our contractual partner are to be effected free to our premises.

2. Our contractual partner is obligated to state our order and article number on all shipping papers and delivery notes.

### **§ 9 – Models, drawings and samples**

1. Illustrations, drawings, calculations, models, templates, samples and similar items remain our property in any event and may not be handed over or disclosed otherwise to third parties without our consent. They may only be used for fabrication on the basis of the contractual relationship with us and must be returned to us on completion of the contract without demand. They are to be kept secret via-à-vis third parties.

2. Tools provided by us remain our property; our contractual partner is obligated to use them only for the manufacture of the goods ordered by us. He is further obligated to mark our tools clearly as belonging to us and to insure same against fire and water damage as well as theft at replacement value at his own expense. Our contractual partner henceforth assigns all claims for compensation for damages from this insurance policy to us; we accept the assignment. Our contractual partner is obligated to carry out all necessary service and inspection work as well as all maintenance and repair work on our tools in good time at his own expense. He is to notify us of any failures immediately.

3. Our contractual partner must swear his suppliers to the aforementioned points 1 + 2.

### **§ 10 – Supplies**

1. Should we supply our supplier with parts or substances, we reserve title to them. Our contractual partner must mark such parts or substances clearly as belonging to us.

2. Processing or transformation of such parts or substances is effected by the contractual partner on our behalf; we acquire co-title to the new item in the ratio of the value of the items supplied by us to the value of the other items processed at the time of processing.

3. Should items supplied by us be combined with other items not belonging to us, we acquire co-title to the new item in the ratio of the value of the item supplied by us to the value of the other items combined at the time of combination.

4. Our contractual partner keeps items to which we are entitled to co-title in safekeeping on our behalf.

## **§ 11 – Quality assurance, quality of goods, inspection and complaint duties, liability for defects**

1.1.

The deliveries and services by our contractual partner must correspond to the respectively agreed specifications, respectively applicable statutory and trade association regulations, accident prevention regulations and the state of the art.

1.2.

Our contractual partner is obligated to investigate and adhere to current restricted substances for his deliveries and services; in particular, he is obligated not to use any prohibited substances. Our contractual partner is further obligated to state substances that are to be avoided and hazardous substances according to the respective latest regulations in his specifications. Where necessary, our contractual partner must furnish the safety data sheets already with his proposals or on respective initial delivery with the delivery note, at least in both the German and English language. Our contractual partner must monitor his production processes continuously to see whether indications for excessive use of restricted substances or the presence of prohibited substances result. Our contractual partner must notify us immediately should such indications result.

1.3.

In the execution of his deliveries and services, our contractual partner alone is responsible for compliance with applicable accident prevention regulations.

Our contractual partner must notify us free of charge of manufacturer specifications regarding protective measures and safeguards; he must supply all safeguards required according to them and other regulations free of charge.

1.4.

In the case of subcontracts our contractual partner must exercise the utmost care – particularly in the processing of castings – and adhere to our instructions exactly. We must be consulted if unclarity exists or in cases of doubt.

When our subcontractor accepts a subcontract, he confirms that he has the machinery necessary to fulfil our requirements.

2.

We may require alterations to the items of delivery regarding design and construction where reasonable for our contractual partner, in which case the effects, particularly regarding higher or lower costs and delivery dates and periods, are to be arranged reasonably according to §§ 315, 316 BGB (German Civil Code).

3.

Our contractual partner undertakes to deliver only such goods that he has subjected to a final inspection regarding their compliance with material specifications, drawings and standards.

4.

We must notify our contractual partner within a period of 10 days of receipt of the goods of apparent defects or defects that can be established without inspection without difficulty as well as of higher or lower deliveries. We must notify our contractual partner of defects detected by us and of higher or lower deliveries within a period of 10 days of discovering a defect. For the rest, § 377 HGB (German Commercial Code) does not apply.

5.

The period of limitation for claims due to defects (warranty claims) against our contractual partner is 36 months, based on the time of the passage of risk. Where a longer period is provided for by law, this longer period applies.

## **§ 12 Assignment of claims against third parties**

Our contractual partner henceforth assigns his warranty claims (claims due to liability of defects) to which he is entitled against third parties, suppliers or subcontractors in connection with the manufacture, delivery or service to us. This assignment does not exclude or limit our contractual partner's liability for defects. We are, however, obligated to re-assign the corresponding claims to our contractual partner if and to the extent that our contractual partner settles the claims due to defects against us himself. We are obligated, on demand by our contractual partner, to make all necessary or reasonable declarations to third parties, suppliers or subcontractors of our contractual partner or to take any necessary or reasonable cooperative actions needed to assert or safeguard the assigned claims.

## **§ 13 – Producer liability, liability insurance**

1.

Our contractual partner must indemnify us against all claims for damages asserted against us by third parties regarding regulations on illegal activities, product liability or other regulations relating to errors or defects in the goods manufactured or delivered by us or the contractual partner in so far as such claims against our contractual partner would also be justified or are no longer justified merely due to lapse of time in the meantime. Against the background of these requirements, our contractual partner must also exempt us from the costs of legal disputes asserted against us due to such claims.

In so far as the claims asserted against us are justified or are no longer justified merely due to lapse of time, we are entitled to a pro-rata right of exemption against our contractual partner, whose scope and amount is based on § 254 BGB (German Civil Code).

Our claims to exemption, expenditure and compensation for damages according to §§ 437, point 3, 478, 634 point. 4 BGB (German Civil Code) are not affected by the aforesaid.

2.

Regarding his liability for claims according to aforesaid point 1., our contractual partner is also obligated to reimburse us any expenditures by us incurred for damage aversion, damage prevention, damage minimization or damage elimination, in particular also expenditures arising from or in connection with a product recall. Regarding the content and scope of a product recall, we will, vis-à-vis our contractual partner, - notify same as far as possible and reasonable and give him an opportunity to respond. Other legal claims are reserved.

3.

Our contractual partner must maintain a product liability insurance policy adequate for his deliveries. The coverage must amount to at least 2 million euros per case of personal injury/damage to property on a flat-rate basis. Our contractual partner must submit documentary proof of such a third-party liability insurance policy on request.

## **§ 14 – Proprietary rights, secrecy**

1.

Our contractual partner assumes responsibility that the goods delivered by him do not infringe any rights of third parties, in particular patents, utility models, other proprietary rights and copyrights. He indemnifies us against the claims of third parties based on any infringement of such rights. In addition to this, he assumes all costs resulting from the fact that third parties assert claims regarding the infringement of such rights and shall defend us in this regard.

2.

The contractual partners undertake reciprocally to treat all commercial and technical details which become known to them and which are not public knowledge as if they were their own business secrets and to maintain absolute silence regarding them vis-à-vis third parties. The contractual partners may only use the business relationship as promotional measure with the prior written consent of the other. For every case of culpable violation of the aforesaid obligations the contractual partners undertake reciprocally to pay a contractual penalty of € 6,000.00 per individual case.

## **§ 15 – Energy management system**

Following an energy management system according to DIN ISO 50001, the procedures of the procurement process of VS GUSS AG must be secured. The VS GUSS AG carries out energy-related inspections for the procurement and purchase of energy-related systems, installations and energy services. At this, the efficiency criteria of the energy-related evaluation and the planned or expected operating life of energy-using products to be procured, installations and services are taken into consideration. For quotation equality, companies with a certified energy management system according to DIN EN ISO 50001 are preferred.

## **§ 16 – Place of performance, jurisdiction, applicable law**

1.

The place of performance and exclusive place of jurisdiction for deliveries, services and payments including disputes regarding checks and bills of exchange and all disputes between the parties is Solingen in so far as our contractual partner is a merchant. We, nevertheless, have the right to sue our contractual partner at any other responsible court in accordance with §§ 12 ff. ZPO (German Code of Civil Procedure).

2.

The business relationship between us and our contractual partner shall be interpreted and construed solely according to the law applicable in the Federal Republic of Germany and excluding international commercial law, in particular the UN convention on sales and other international accords on the standardization of commercial law

VS GUSS AG, Solingen 2017