

Terms and Conditions of Sale and Delivery of VAN HEES GmbH

1. General

Our tenders, deliveries and services are carried out exclusively subject to the following terms and conditions of sale and delivery. These also apply to all future business dealings, even if they are not expressly agreed again. These terms and conditions are considered to have been accepted at the latest on acceptance of the goods or services. We are not bound by any contrary or supplementary agreements, in particular the customer's purchase conditions. The latter are rejected.

2. Tenders and conclusion of contracts

Our tenders are subject to confirmation and nonbinding. Declarations of acceptance and all orders must be confirmed in writing or by telex to have any legal effect. The same applies to supplements, amendments or subsidiary agreements. All details relating to measures, weights or other delivery data are only binding if and to the extent that we expressly specify them as binding in writing.

3. Prices

The prices given in our confirmation of order, plus the respective statutory turnover tax, shall apply. If there is no written confirmation of order, our prices valid on the delivery date are applicable. Unless otherwise agreed, prices are from our warehouse, including normal packaging. Special packaging is subject to a separate charge or provided on hire for a hire charge. It is to be returned to us carriage paid and in good condition no more than three months after the invoice date.

4. Shipping

For our deliveries, the loading point is the place of performance. All consignments are transported at the customer's risk. The shipping method and route are chosen by us. If additional costs are incurred in meeting customer wishes, these are borne by the customer.

5. Payment

Our invoices are payable within the agreed period from the invoice date. If the payment deadline is missed, we are entitled to charge, from the due date (for traders) or from default (for non-traders), interest equal to the interest usually charged by the banks on debit balances, but at least 5 percentage points above the base rate (for consumers) or 8 percentage points above the base rate (for contractors). We reserve the right to claim further compensation. The customer is entitled to prove that, in fact, lower loss was incurred. Only undisputed counterclaims that have become res judicata give the customer the right of set-off or retention. In the event of any default in payment or justified doubt over the customer's solvency or creditworthiness, we are authorized, notwithstanding our other rights, to demand payment in advance for any deliveries not yet carried out and to demand immediate payment of all claims resulting from the business relations. Our obligation to deliver is suspended for as long as the customer has failed to make any due payment. If we agree to payment by bill of exchange, any discount charges and bank charges are borne by the customer.

6. Notification of and liability for defects

On receipt, the customer has to examine the goods supplied (where reasonable, also by taking samples) for defects in terms of their condition and suitability for the intended purpose, otherwise the goods are considered to be approved. All recognizable defects, shortfalls and incorrect deliveries are to be notified to us in writing within five working days following delivery, but in any case before the goods are processed. Any damage in transit is to be notified to us in writing immediately. The customer has to carry out any necessary formalities with respect to the freight carrier. Only if a defect is legitimately notified in good time is there any claim under defect liability. Our defect liability obligation is limited to subsequent performance, that is to say, at our discretion, either by remedying the defect or by delivering a defect-free replacement. If subsequent performance should fail, the customer is entitled, under statutory conditions, to reduce the purchase price or withdraw from the contract.

Customer claims for damages resulting from and in connection with the defectiveness of the goods, in particular a claim for compensation for damage that has not been caused to the goods themselves, are excluded pursuant to Clause 7.

7. Exclusion of liability

Any damage compensation claims, in particular for damage not caused to the goods themselves, particularly as a result of any breach of contractual obligations or unauthorized handling, are excluded.

This exclusion of liability does not apply in the event of intent, gross negligence on the part of the owner or manager, or negligent breach of essential obligations. In the event of negligent breach of essential contractual obligations, we are liable, other than in cases of intent or gross negligence on the part of the owner or manager, only for reasonable and foreseeable damage typical under such a contract. The exclusion of liability is also inapplicable in cases where, as a result of defects in the goods, liability for personal injury or damage to private property is incurred. Nor is it applicable if we have guaranteed the condition of the goods or fraudulently concealed any defect in the goods. The exclusion of liability is also inapplicable with respect to loss resulting from death, physical injury or damage to health owing to any deliberate or negligent breach of obligations by us, our legal representatives or vicarious agents.

8. Reservation of ownership

We reserve right of ownership of delivered goods as security in respect of all claims we may have against the customer as a result of the business relations. The reservation of ownership also extends to the new products created through processing, mixing or combining our goods where we are the manufacturer. When the goods are processed, combined or mixed with products that do not belong to the customer, we acquire joint ownership pro rata according to the invoice value of our reserved goods and the invoice values of the other materials. The customer hereby assigns to us, by way of security, all receivables resulting from the sale of reserved goods in their entirety or to the extent of any joint ownership share we may have. If the customer is willing and able to meet his obligations towards us properly, he may dispose of the goods owned or jointly owned by us in the proper course of business and call in the receivables assigned to us himself. The customer may only enter into chattel mortgages, pledges and the assignment of receivables, including by way of the sale of receivables, with our prior written consent. Access by third parties to the goods and receivables belonging to us is to be notified to us by the customer immediately. If the value of the security exceeds the receivables to be secured by more than 10%, then we shall release security, at our discretion, at the customer's request.

Exercising reservation of ownership does not mean withdrawal from the contract.

9. Data protection

The customer is informed and agrees that, during processing of the contract and settlement of accounts, data is processed and stored on computer. The delivery note and invoice are simultaneously considered to be notification within the meaning of Section 26(1) of the German Federal Data Protection Act.

10. Applicable law and court of jurisdiction

The law of the Federal Republic of Germany shall apply to these terms and conditions and the entire business relations with the customer, the applicability of the Convention on Contracts for the International Sale of Goods being excluded. The place of performance for all of our deliveries is our respective place of dispatch. The place of performance for payment by the customer is 65396 Walluf. If the purchaser is a trader entered in the commercial register (a *Vollkaufmann*), then 65185 Wiesbaden (Amtsgericht) or 65185 Wiesbaden (Landgericht) is the exclusive court of jurisdiction for all disputes resulting from the business relations. Should any provision of these terms and conditions or any contractual agreement be or become invalid, this shall not affect the validity of any other provisions or agreements.