

General Terms and Conditions of Trade of Varioboard GmbH

1 – General

1.1.

All offers, order confirmations, deliveries and services on our part are governed exclusively by our General Terms and Conditions of Trade. This applies even when there is no explicit reference to the Terms and Conditions of Trade in the course of trading relations.

1.2.

The Terms and Conditions of Trade of a third party apply only if accepted by us explicitly and in writing. No acceptance of the Terms and Conditions of Trade of a third party is implied by the transaction of an order.

2 – Conclusion of contract

2.1.

Contracts with our company are entered into when a customer places an order and we confirm that order in writing. The order is binding upon the customer for three weeks from the date on which it was placed.

2.2.

Offers made on our part before an order is placed by the customer are not binding unless expressly agreed otherwise in writing.

2.3.

Amendments and addenda to the ratified text of the contract are valid only if made in writing.

2.4.

N.B. Our field workers, representatives and other individuals with no legal representative authority vis-à-vis our company are neither empowered nor entitled to make any statement or assurance deviating from the terms of our order confirmation, or to reach subsidiary agreements.

3 – Prices

3.1.

Our prices are for deliveries ex works, shipped free on truck/rail, excluding turnover tax and packing.

3.2.

We will honour the prices confirmed by us until the agreed date on which the customer takes delivery, but for a maximum of two months. This applies also and in particular to call orders.

3.3.

We reserve the right to increase our prices once two months have elapsed in accordance with any changes in the basis of computation resulting from higher wage and material costs, increases in statutory turnover tax or other circumstances, in particular costing changes which are justified for technical reasons. Should the increase amount to more than 5 % of the agreed price, the customer is entitled to withdraw from the contract.

4 – Delivery, delay and consequence of delay

4.1.

Delivery deadlines are not binding if they are referred to explicitly in our order confirmation as prospective delivery deadlines. A contractually agreed delivery period may be extended within reason as a result of action resulting from lawful industrial disputes within our company, in particular strikes and lockouts. This also applies to any industrial action affecting the companies of our subcontractors, regardless of its legality.

4.2.

If we default in delivery for reasons which we must justify, our liability for damages is restricted to 50 % of the foreseeable loss in cases of ordinary negligence. More extensive claims for damages may only be made if the delay is due to wrongful intent or gross negligence.

4.3.

If, upon our failing to meet the deadline, the customer grants a reasonable respite under threat of refusal to accept the goods, he is entitled to withdraw from the contract if this grace period expires without

bearing fruit. The customer is entitled to claim compensation for non-fulfilment in terms of the delay only if the delay is due to wrongful intent or gross negligence.

4.4.

Should our suppliers fail to meet delivery deadlines or fail to supply a delivery, we are entitled to withdraw from this contract. Non-delivery occasioned by negligence does not entitle us to withdraw.

4.5.

If we are permanently and not just temporarily unable to supply the customer as a result of force majeure, we are entitled to withdraw from the contract. Failure to supply resulting from negligence does not entitle us to withdraw.

4.6.

It is always within our rights to make partial deliveries.

5 – Shipment and bearing of risk

5.1.

A negotiated shipment is made for the account of the recipient.

5.2.

Upon despatch of the goods, the risk is transferred to the customer without exclusion, even if carriage-paid delivery has been contractually agreed. If the goods are ready for shipment, and despatch is postponed for reasons for which we are not responsible, risk is transferred to the customer upon receipt of notification that the goods are ready for shipment.

5.3.

If shipment is postponed at the request of the customer, then one month after notification that the goods are ready for shipment he becomes liable for the costs resulting from storage, if they are stored on our premises, as a minimum, however, for 0.5 % of the value of the invoice per month.

6 – Payment

6.1.

Payment is due within 30 days of the date of invoicing.

6.2.

No cash discount is granted for payment by bill. The applicable date is that on which we are in receipt of payment.

6.3.

The deduction of a cash discount with regard to recently issued invoices is inadmissible if earlier payable invoices remain unsettled. Payments received by us are used first to cover costs, then interest, with the surplus being used to settle liabilities in the order in which they were incurred.

6.4.

In the case of partial deliveries, we are entitled to submit invoices for each instalment.

6.5.

The customer can set off undisputed or legally determined counterclaims against the invoice. The customer is not entitled to a right of lien on the purchase price on account of payable claims resulting from other contractual relations with us. Neither is he authorized to withhold the entire or predominant part of the purchase price because of a small counterclaim.

6.6.

If there is a default of payment on the part of the customer, we are entitled to demand interest on arrears of 4 % p.a. over and above the current base rate of the Deutsche Bundesbank. If we can demonstrate additional loss due to default, we are entitled to claim respectively. We can invoice a flat rate of € 6.00 for each reminder, although the customer has the option of demonstrating to us that we have not incurred this resulting degree of loss.

6.7.

Should the customer make default of payment, and should, after conclusion of the contract, circumstances become known to us which suggest that the customer is not credit-worthy, we are entitled to demand payment in advance, and to withdraw the terms of payment granted to the customer.

7 – Retention of title

7.1.

We retain the title to goods until all claims on the buyer under existing business relations have been met. This is also and in particular the case where claims, either individually or in toto, are part of a running account, and the balance has been drawn up and accepted.

7.2.

As long as the buyer duly meets his obligations to our company, he is authorized to dispose of goods for which we have title in the ordinary course of business. The buyer relinquishes to our company with immediate effect all claims arising from such a sale of reserved goods so as to safeguard the existing title; the buyer retains the right, however, to recover these relinquished claims himself.

7.3.

Passing of title to oneself, pledging and assignment of claims, including through the sale of receivables, in relation to the goods supplied under the retention of title shall not be deemed as constituting an ordinary course of business under 7.2.

8 – Passing of risk

Under 5.2. the buyer bears the risk of loss of the supplied goods from the agreed time when they are made available by our company. He is subsequently obliged to ensure their safekeeping and keep them adequately insured. In the case of damage, the resulting claim under the insurance shall be assigned to us to settle outstanding purchase price claims, i.e. we have prior claim to a partial amount equating to the purchase price of the supplied goods. If the insurance does not cover the loss to its full extent, we will not accept pro-rata compensation.

9 – Warranty and liability

9.1.

The buyer must satisfy himself that the supplied goods are faultless and suitable for their intended purpose, if necessary by testing a sample. If no such examination is made, our company is absolved from any liability whatsoever.

9.2.

If notification of defects is duly lodged and substantiated, we will respond by offering a price rebate, remedying the defect, exchanging the goods or taking them back and reimbursing the purchase price. Goods which are the subject of a complaint may only be returned to us with our explicit consent.

9.3.

The buyer must inform us in writing of any defects without delay, and no later than one week after receipt of the goods. Defects which cannot be detected within this period even after careful examination must be brought to our attention in writing as soon as they are identified.

9.4.

To the extent that it is legally admissible, no claims for compensation by the buyer will be entertained which result from defects in supplied goods or from the breach of secondary obligations.

10 – Information and advice

Information about potential processing and application of our products, technical recommendations or advice and other specifications are supplied to the best of our knowledge, but are not binding, and we accept no liability whatsoever resulting therefrom.

11 – Place of performance, applicable law, legal venue

11.1.

The place of performance for delivery is our registered office unless expressly agreed otherwise in writing. All legal relations with the buyer shall be exclusively subject to the law of the Federal Republic of Germany to the exclusion of the UN Sales Law of 11/4/1980.

11.2.

The exclusive legal venue for any disputes is the registered office of our company.