

General terms and conditions of the Volz GmbH Fluidtechnologie

valid from 01.09.2005 (herewith all former versions lose their validity)

1. Validity

1.1. For all contract conclusions directed at deliveries/services the following terms of sale are valid. The terms of sale are accepted by the purchaser for the duration of the business relationship by placing orders, or at the latest with acceptance of the first delivery.
1.2. Assurances, additional agreements, alternations of the contract requested by the purchaser as well as conditions of purchase which differ from these General Conditions of Insurance only apply if they are explicitly confirmed in writing by the Volz GmbH Fluidtechnologie.

2. Quotation, conclusion of contract and subject terms of contract

2.1. Quotations are always made without engagement. The contract is only effective if the content is confirmed by the Volz GmbH Fluidtechnologie and in writing or by consignment. If the delivery is effected immediately without confirming the order, the invoice is at the same time considered as order confirmation.
2.2. The Volz GmbH Fluidtechnologie shall be entitled to modify the construction of the subject of the contract without prior notice during the delivery period, provided that the functions are only modified within the specified tolerances and the look is only modified in a way which is acceptable for the purchaser. The tolerances are for all quality characteristics the DIN-customary ones. If the purchaser is a merchant, discrepancies of up to 10 % of the ordered quantity are allowed.
2.3. Part deliveries are allowed.

3. Prices and terms of payment

3.1. Prices are charged in EURO, in default of other agreements. Prices are quoted Ex Works, packing and loading included. In each case the valid legal value-added tax is added to the prices. The Volz GmbH Fluidtechnologie charges the prices agreed upon at the time of the contract conclusion. The prices are based upon the expense factor valid at this time. If the expense factors (particularly for material, wages, freight, duties, etc.) change between the conclusion of the contract and the arranged delivery date, the Volz GmbH Fluidtechnologie is authorized to alter prices accordingly. If the purchaser is non-trader or if the contract cannot be allocated to the business of a commercial trade this only applies if the period between the conclusion of the contract and the arranged delivery date is longer than 4 months.
3.2. For all payments the terms of payment stated by the Volz GmbH Fluidtechnologie apply. If no other agreements have been made, all payments have to be settled within 30 days after the invoice date, without any deduction, at the imprest account. Bills of exchange and checks are only considered as settlement when they are cashed. Payments by note have to be previously accepted on the part of the Volz GmbH Fluidtechnologie in writing. Bank discount and other charges are for the account of the purchaser and have to be paid immediately.
3.3. It is not allowed to charge up invoices against counterclaims of the purchaser, which are contradicted or not declared legal by the Volz GmbH Fluidtechnologie. The purchaser can only assert the right of detention on the basis of counterclaims from the same contract.

4. Delay of payment, worsening of assets, moratorium

4.1. In case of delayed payment or moratorium the purchaser is billed with interest of 4 % (per year) above the bank rate of the German Central Bank. If the Volz GmbH Fluidtechnologie proves that the interest charge is higher, or if the purchaser proves that the interest charge is lower, the interest has to be charged at a higher or lower rate accordingly.
4.2. If a payment of the purchaser is delayed, or if precise indication for his forthcoming insolvency are existent, the Volz GmbH Fluidtechnologie is allowed to cease the continuation of the work on current orders and demand adequate security for the completion of the contract. If the purchaser does not provide such securities at short notice, the Volz GmbH Fluidtechnologie is authorized to withdraw from the contract (from the contracts respectively) and bill the purchaser for the costs developed by then, as well as to bill the purchaser for the loss of profit.

5. Delivery time, delay in delivery, impossibility of performance

5.1. The delivery time agreed upon begins with the conclusion of the contract, but not before the complete adduction of data which has to be provided by the purchaser, for example permissions and authorisations. The delivery time also begins only after receipt of a possibly agreed upon advance payment. The compliance with the time of delivery by the Volz GmbH Fluidtechnologie assumes in either case that the purchaser fulfils his contractual obligations.
5.2. The delivery time is adhered to, if the subject of the contract has been forwarded from the Volz GmbH Fluidtechnologie before the expiration of the delivery time or if the readiness for despatch has been communicated in written form. Belated changes or additional requests of the purchaser extend the delivery time adequately. The same happens if unforeseen events occur, on which the Volz GmbH Fluidtechnologie has no influence, e.g. force majeure, industrial actions, strike, lockout, delay in the delivery of basic raw materials, matters or parts. The same applies accordingly if the above mentioned circumstances occur at a subcontractor of the Volz GmbH Fluidtechnologie. The Volz GmbH Fluidtechnologie cannot be held liable for the above mentioned circumstances nor if the circumstances occur during an already existing delay.
5.3. If the Volz GmbH Fluidtechnologie is responsible for a delay in delivery, the purchaser can grant the Volz GmbH Fluidtechnologie an adequate extension of time in written form, with the information, that the subject of the contract will not be accepted after the expiry of the time-limit. After the effectless expiry of the time-limit the purchaser is authorised to withdraw from the contract by making a statement in written form, and to demand compensation for non-performance respectively in case of intention or gross carelessness. Further legal claims (e.g. §§ 286 and 326 German Civil Code) are excluded. The same applies accordingly if defaults are caused by the impossibility of delivery/accomplishment on the part of the Volz GmbH Fluidtechnologie.
5.4. If the purchaser is a non-trader and if the defaults are based on slight negligence on the part of the Volz GmbH Fluidtechnologie, the purchaser is entitled to compensation of at the most 0,5 % of the merchandise value which is behind schedule and which therefore can neither be used contractually nor in due time.

6. Delivery, consignment, passing of risk, insurance and acceptance, packing

6.1. The Volz GmbH Fluidtechnologie delivers carriage forward and uninsured Ex Works.
6.2. The risk of accidental loss and damage is transferred to the purchaser at the latest with despatch of the subject of the contract. This is also valid if part deliveries are effected and if the Volz GmbH Fluidtechnologie has accepted other services (e.g. transmission costs or delivery and assembly). On request of the purchaser the Volz GmbH Fluidtechnologie can arrange transit insurance for the consignment at the purchasers' own expense. Except when otherwise stipulated in writing, the purchaser is free to conclude transport - or other insurances at his own expense.
6.3. If the purchaser is responsible for a delay of despatch, the risk is vested in the purchaser from the day of readiness for despatch on.
6.4. Delivered subjects of the contract have to be accepted by the purchaser, even if marginal deficiencies exist. The guarantee claims of the purchaser, according to article 5 of these General Conditions of Insurance remain unaffected.
6.5. Packing is effected appropriately and carefully on the part of the Volz GmbH Fluidtechnologie, special requests concerning the packing will be charged separately.

7. Default of acceptance, call-off order

7.1. If the purchaser does not accept the subject of the contract or if he does not accept the subject on the due date, the Volz GmbH Fluidtechnologie is authorised to either set an adequate extension of time (after the expiration of this term the Volz GmbH Fluidtechnologie is authorised to dispose of the subject of the contract otherwise and to effect a new delivery after the expiration of an adequate extension of time) or to bill the purchaser immediately for the subject of the contract and to place the subject into stock at the purchasers' risk and expense. In either case the purchaser is billed for the storage costs, at least however with 1 % of the invoice value for every incurred month, beginning one month after notice of the readiness for despatch.
7.2. Unaffected hereof remains the right of the Volz GmbH Fluidtechnologie to withdraw from the contract (provided that the requirements of § 326 German Civil Code are met) or to demand compensation for the non-performance of the contract. If the Volz GmbH Fluidtechnologie demands compensation for the non-performance, 25 % of the invoice amount can be claimed as compensation without proof, unless the purchaser proves an effective damage in minor amount. The assertion of a verifiably higher damage remains reserved.
7.3. Unless otherwise agreed, orders, which are confirmed by the Volz GmbH Fluidtechnologie on call, have to be called-off within one year after the order date at the latest. The same applies also for delivery reserve or subsequent on call positioning. If the goods are not called-off within the stated period of time, the regulations of article 7.1. apply accordingly.

8. Conditional sale, assignment of claim

8.1. The delivered subject of the contract remains property of the Volz GmbH Fluidtechnologie by the time of complete payment of all outstanding debits of the business relationship, particularly also by the time of encashment of all cheques or bills of exchange. The same applies if the subject of the contract is processed, this happens always for the Volz GmbH Fluidtechnologie as a manufacturer (§ 950 German Civil Code). At processing, connecting and blending of the subject of the contract with other goods, the joint ownership is in due proportion to the invoice value of the subject of the contract to the value of these other goods, at the date of the processing, connecting and blending.
8.2. The purchaser is only authorised to dispose of the reserved goods within the scope of common business connections, and only as long as his payment is not delayed. The purchaser is not authorised to place the reserved goods to other disposals (e.g. transfer by way of security, pledging). Demands for purchase prices and work wages of the purchaser from the resale of the reserved goods amounting to the invoice value of the Volz GmbH Fluidtechnologie are transferred to the Volz GmbH Fluidtechnologie until all claims of the Volz GmbH Fluidtechnologie, including bills of exchange, are balanced. The purchaser is authorised to collect these claim until recalled.
8.3. The Volz GmbH Fluidtechnologie is obliged to release securities of its' own choice by request of the purchaser, as far as these securities exceed the open claims which have to be secured by more than 20 %.
8.4. In case of delayed payment, pending cessation of payment as well as in cases of unsatisfying information as to the solvency of the purchaser, judicial executions or acts of protest directed to the purchaser, the Volz GmbH Fluidtechnologie is authorised to acquire the reserved goods. The purchaser is obliged to deliver these goods. The purchaser bears full costs of reset and utilisation of the reserved goods. The utilisation costs are added up to 10 % of the utilisation revenue without proof, including purchase tax: they have to be raised or reduced if the Volz GmbH Fluidtechnologie proves higher or if the purchaser proves lower costs. The purchaser will be credited for the revenue, after the deduction of the costs and other outstanding debits of the Volz GmbH Fluidtechnologie which adhere to the contract. The assertion of the retention of title as well as the execution of the goods delivered by the Volz GmbH Fluidtechnologie are not considered as cancellation of the contract unless the consumer credit law applies.
8.5. The purchaser has to inform the Volz GmbH Fluidtechnologie immediately if the reserved goods are distrained or affected by third parties. All costs which occur in these cases have to be paid by the purchaser.
8.6. The purchaser has to effect adequate insurance for the reserved goods against all customary risks and to handle the goods with care. Claims of the purchaser against the assurance in the event of damage are ceded to the Volz GmbH Fluidtechnologie with conclusion of the contract amounting to the value of the reserved goods.
8.7. The conclusion of financed treaties (e.g. leasing), about the assignment of the reserved goods, is subject to prior acceptance on the part of the Volz GmbH Fluidtechnologie, unless the financing institution is bound by contract to remit the purchase price share, to which the Volz GmbH Fluidtechnologie is entitled, directly to the Volz GmbH Fluidtechnologie.

9. Guarantee, liability, secondary obligations, limitation of time

9.1. The Volz GmbH Fluidtechnologie has to be reproved for visible deficiencies immediately after receipt of the subject of the contract, in case of hidden deficiencies this has to be communicated in written form immediately after ascertainment. If the purchaser is non-trader, he is only obliged to reprove the Volz GmbH Fluidtechnologie immediately for deficiencies.
9.2. In cases of justified claims, the purchaser is only allowed to reserve payments in an adequate amount proportional to the deficiencies.
9.3. The Volz GmbH Fluidtechnologie is liable for duly reproved deficiencies, also for the non-existence of guaranteed characteristics, as follows:
to refit the parts free of charge or to make a new delivery at the own option of the Volz GmbH Fluidtechnologie. This is valid for parts which prove to be affected as a result of a circumstance which occurred before the passing of the risk underlying, especially due to defective design, inadequate building materials or construction due to which these parts are unusable or considerably affected in their usability. Several amendments or new deliveries are allowed. Replaced parts are property of the Volz GmbH Fluidtechnologie.
The purchaser is obliged to grant the Volz GmbH Fluidtechnologie the required time and opportunity to carry out all amendments and compensation deliveries which appear necessary, otherwise the Volz GmbH Fluidtechnologie is liberated from the liability for defects.
Liability for defects will not be assumed for damage, developed from inappropriate or faulty utilisation, incorrect assembly and start-up respectively on the part of the purchaser or third parties, through natural abrasion, incorrect or inattentive handling or maintenance, improper manufacturing resources or substitution material, inadequate installation, chemical, electrochemical or electric influences. The duty of guarantee does also not apply if corrective maintenance, damaging or changes are carried out which are causally linked to the asserted deficiencies conducted on the part of the purchaser or third parties without prior agreement of the Volz GmbH Fluidtechnologie.
9.4. If amendments or compensation deliveries are impossible, definitely abortive or unacceptably delayed, the purchaser is allowed to demand the cancellation of the contract or the reduction of the purchase price. All other contractual and non-contractual claims of the purchaser against the Volz GmbH Fluidtechnologie and their servants are excluded, particularly claims for damages due to direct or indirect damages, lost profits, as well as claims from the management of the guarantee, unless the Volz GmbH Fluidtechnologie has to take intention or gross carelessness or is liable for legal reasons respectively.
9.5. The technical advice concerning the application technology on the part of the Volz GmbH Fluidtechnologie in spoken and written, as well as proposals, calculations, project deliveries and so on are merely provided to explain the application of the products of the Volz GmbH Fluidtechnologie at the best. These proposals etc. do not relieve the purchaser of his duty, to satisfy himself of the suitability of the products supplied by the Volz GmbH Fluidtechnologie for the intended aim and use, by checking the goods on his own initiative. If the subject of the contract cannot be used as provided in the contract, due to culpably breach of incumbent accessory obligation on the part of the Volz GmbH Fluidtechnologie, also before the contract conclusion (e.g. by failure of advisory service, deficient advice or wrong instruction), the regulations for the liability of the Volz GmbH Fluidtechnologie according to chapter 9.1.-9.4. of these General Conditions of Insurance apply accordingly, excluding advanced claims of the purchaser.
9.6. The legal statute of limitations for granting claims are also valid for all other claims of the purchaser, including contractual and non-contractual claims for damages.
9.7. If the exclusion of liability, regulated in this chapter 9, for cases of slight negligence becomes or is ineffective, alternatively the limitation of liability on the part of the Volz GmbH Fluidtechnologie on the assignment of claims from the product liability insurance, concluded by the Volz GmbH Fluidtechnologie, applies accordingly.

10. Trade mark rights, tools

10.1. The proposals and offers submitted by the Volz GmbH Fluidtechnologie are and remain intellectual property and may only be made aware to third parties upon written approval.
10.2. The operating articles manufactured by the Volz GmbH Fluidtechnologie in order to produce the subjects of the contract by order of the purchaser (particularly tools, appliances, etc.) remain property of the Volz GmbH Fluidtechnologie, also if separate charging or cost sharing on the part of the purchaser has been effected. A claim for the delivery of these tools or appliances on the part of the purchaser is not permissible, nor if the business connection is terminated.
10.3. The purchaser is solely liable, if rights, particularly industrial property rights of third parties, are violated as a result of the execution of his order.

11. Legal effect, place of delivery, applicable law, place of jurisdiction

11.1. The inefficacy of individual determinations is without prejudice to the legal effect of these General Conditions of Insurance altogether. Instead of ineffective determinations the legal admissibility is valid.
11.2. Place of delivery is for both contractual parties the domicile of the Volz GmbH Fluidtechnologie in Deilingen (Germany).
11.3. German Law applies. The United Nations Convention on Contracts for the international sale of goods is excluded.
11.4. The jurisdiction is, provided that the purchaser is merchant who has been entered as such in the commercial register or body corporate of the public law or responsible body of a public separate estate, at the option of the Volz GmbH Fluidtechnologie Tuttlingen or Stuttgart (Germany). The same court of jurisdiction does apply if the purchaser does not have a general inland jurisdiction, or if after conclusion of the contract his domicile or haunt is unknown up to the time of commencement of action. If merchandise is sent abroad, the Volz GmbH Fluidtechnologie is allowed to file suit of its own choice also in the capital of the state where the purchaser has his domicile or haunt.