

# General Terms and Conditions for the Supply of Goods and Services

vliepa GmbH, Brüggen (Germany)

(version as of Jan. 2017)

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## 1. Scope of Application

1.1 These general terms and conditions for the supply of goods and services ("**Conditions**") by **vliepa GmbH** ("**vliepa**") shall apply exclusively to any and all business transactions with entrepreneurs within the meaning of section 14 of the German Civil Code (BGB), legal entities governed by public law, and special trusts under public law ("**Purchaser**"). Unless **vliepa** has explicitly given its consent to their validity, **vliepa** does not acknowledge any provisions of the Purchaser deviating from or supplementary to these Conditions or statutory provisions. This shall also apply in case **vliepa** delivers goods, provides services or accepts payments without reservation.

1.2 Within the scope of an ongoing business relationship, these Conditions shall also apply to any and all future deliveries and services (jointly "**Deliveries**") provided by **vliepa** under a contract concluded with the Purchaser, without **vliepa** having to refer to these again in each individual case.

1.3 **vliepa** provides any and all Deliveries under a contract exclusively on the basis of these Conditions.

## 2. Offer and Formation of Contract

2.1 **vliepa's** offers are always made without engagement and non-binding. Any public statements, promotions or advertisements, images, drawings, measures, weights, and other performance characteristics are for general information and for the purpose of contract negotiations. They do not constitute any indication of quality and are only binding, if **vliepa** has explicitly agreed to them in writing. **vliepa** reserves its right to technical modifications, modifications of shape, color and/or weight and assumes no liability in case of printing errors and other errors.

2.2 In case the Purchaser envisages a use of the goods to be delivered ("**Delivery Item**") exceeding the customary use of the Delivery Item in the Federal Republic of Germany, or in case the Purchaser assumes a certain suitability of use of the Delivery Item or a certain design and construction of the Delivery Item, or in case the Purchaser intends to use the Delivery Item for technical customized solution, the Purchaser shall notify **vliepa** in writing about the respective expectations and/or circumstances in its offer.

2.3 **vliepa** may accept an order of the Purchaser within two weeks following its submission. Until the expiration of this period of time, the Purchaser is bound to its offer. **vliepa's** silence does not constitute any trust in formation of contract. A contract is concluded by written order confirmation by **vliepa**. Apart from that, a contract is concluded, if **vliepa** commences the Deliveries under a contract without reservation.

## 3. Prices and Payment Terms

3.1 Unless otherwise agreed upon, **vliepa's** prices are ex works ("EXW" according to Incoterms 2010), exclusive of VAT. In addition, the Purchaser shall bear any and all customs or import duties and additional expenses, eventual insurance premiums, and the VAT applicable.

3.2 Unless otherwise agreed upon, payments are immediately due and shall be made to **vliepa** at the latest within 30 days after the due date and proper invoicing by **vliepa**. We accept bank transfer as a means of payment. The date of receipt of payment to **vliepa's** account shall be decisive for the timeliness of the payment by the Purchaser.

3.3 In case of delay in payment by the Purchaser, **vliepa** is entitled to charge default interest in the amount of nine percentage points above the respective base rate of the European Central Bank. Further claims or rights of **vliepa** due to the delay in payment by the Purchaser remain unaffected.

3.4 The Purchaser shall only have the rights to set-off or to retention, insofar as its claims against **vliepa** are undisputed or have been finally adjudicated, or its counterclaims derive from the same contractual relationships as **vliepa's** claim.

3.5 If, after the conclusion of the contract, **vliepa** becomes aware of circumstances challenging the Purchaser's financial solvency or credit worthiness, thereby endangering the fulfillment of **vliepa's** claim for payment, **vliepa** is entitled to claim from the Purchaser the payment in advance or a security within an appropriate period of time, otherwise to refuse the provision of the Deliveries until the fulfillment of the request for payment in advance or security. In case the Purchaser refuses to make a payment in advance or to provide a security, or fails to do so within the fixed period of time, **vliepa** is entitled to rescind the contract, either entirely or in parts.

#### 4. Reservation of Title

4.1 **vliepa** reserves the ownership of the Delivery Items ("**Reserved Goods**") until the full satisfaction of any and all claims under the business relationship with the Purchaser.

4.2 The Purchaser is obliged to insure the Reserved Goods against the risk of loss or damage to the goods, accidental loss or damage caused by fire, water, and burglary during the time after the passing of the risk. Furthermore, the Purchaser shall insure the Reserved Goods in transit against the risk of loss, damage, and destruction. In case of loss, destruction or damage to the Reserved Goods, the Purchaser shall notify **vliepa** without delay and shall provide **vliepa**, upon request, with any and all damage related documents concerning the Reserved Goods, in particular but not limited to damage assessments; furthermore, the Purchaser shall inform **vliepa** about the existing insurances and, at **vliepa's** choice, either provide **vliepa** with the insurance certificate or with a chattel paper issued by the insurer for the Reserved Goods of **vliepa**.

4.3 The Purchaser shall immediately notify **vliepa** of any access by third parties to the Reserved Goods, such as in case of a seizure, as well as about any possible damage to or the destruction of the Reserved Goods. The Purchaser shall notify **vliepa** of any change in possession of the Reserved Goods, as well as the change of its registered office.

4.4 In the event of a breach of duty by the Purchaser, **vliepa** is entitled to rescind the contract and to ask for the return of the Reserved Goods in accordance with the statutory prerequisites.

4.5 The Purchaser is authorized to resell the Reserved Goods in the due course of its regular business. By way of security and with immediate effect, the Purchaser assigns to **vliepa** any and all claims against its buyers arising in connection with the resale of the Reserved Goods; **vliepa** hereby accepts the assignment. In case the Reserved Goods are resold together with other goods which do not belong to **vliepa**, the Purchaser's claim against its buyers shall be deemed assigned in the amount of the price for the Reserved Goods agreed upon between **vliepa** and the Purchaser. After the assignment of the respective claim, the Purchaser remains entitled to collect these receivables. However, should the Purchaser be in default with payments or in case of any other compelling reason, **vliepa** reserves the right to revoke the authorization to the resale and to the collection of receivables and to collect the receivables in such case. In case **vliepa** revokes the collection authority, the Purchaser is obliged, upon request, to provide **vliepa** with any and all information and the documents which are necessary for the collection of the receivables.

4.6 The Purchaser is permitted to process the Reserved Goods, or to mix or combine them with other items. At all times, the Purchaser carries out the processing, mixing or combining (jointly "**Processing**") of the Reserved Goods free of charge for **vliepa** and in the latter's capacity as manufacturer pursuant to section 950 of the German Civil Code (BGB). Besides, the provisions regarding the Reserved Goods shall apply accordingly to all items produced by Processing, to which **vliepa** acquires full or partial ownership. If the Purchaser processes the Reserved Goods with other goods which are not property of **vliepa**, **vliepa** will acquire co-ownership of the newly manufactured items in the ratio of the value of the invoice value of the processed Reserved Goods to the invoice

value of the other combined/mixed goods. In this case, the Purchaser shall store the co-ownership for **vliepa**. Besides, the provisions regarding the Reserved Goods shall apply accordingly to all items produced by Processing to which **vliepa** acquires full or partial ownership.

4.7 The Purchaser is not allowed to pledge the Reserved Goods or to transfer them as security. In case of seizure and in case of a confiscation or any other disposal of third parties, the Purchaser shall notify **vliepa** without delay and provide **vliepa** with any and all information and documents which are necessary for **vliepa** to safeguard its rights.

4.8 **vliepa** undertakes to release its securities (Reserved Goods and the items or claims, replacing the Reserved Goods), insofar as their estimated value exceeds the amount of the secured claims by more than 50 %. **vliepa** is free to choose the securities to be released accordingly.

4.9 Any pictures, drawings, calculations and other product, application, or project related documents containing protected know-how or protected information remain the property of **vliepa** and are subject to **vliepa's** copyright, even if they are handed over to the Purchaser; without the prior written consent of **vliepa**, they may neither be copied or made available to third parties.

## 5. Delivery and Delivery Dates

5.1 Unless otherwise agreed upon, **vliepa's** Deliveries are ex works ("EXW" according to Incoterms 2010). **vliepa** is entitled to make partial Deliveries, insofar as this is reasonable for the Purchaser.

5.2 The delivery time is defined in the written order confirmation by **vliepa**. Any firm dates concerning the Deliveries ("**Delivery Dates**") are individually agreed upon in writing with the Purchaser and are subject to the proper and timely self-supply by **vliepa's** suppliers.

5.3 For the compliance with the Delivery Dates, the moment of **vliepa's** notification stating that the Delivery Items are ready for collection is decisive, even if the Purchaser is unable to collect the Delivery Item in due time without any fault of **vliepa**.

5.4 Preconditions for the compliance with the Delivery Dates are the clarification of all technical questions, the presentation of the necessary permits and documents, and the timely fulfillment of any possible contributory obligations and/or duties of the Purchaser.

5.5. In case of force majeure, strike, interruption of operations, unfavorable weather conditions or any other circumstances beyond the control of **vliepa**, the Delivery Date shall be extended by the duration of the impediment. In this context, it is irrelevant, if the impediment occurs within the sphere of **vliepa** or within the sphere of one of **vliepa's** upstream suppliers and/or vicarious agents.

5.6 In case the Purchaser is in default of acceptance, **vliepa** is authorized to store the Delivery Item at the Purchaser's risk and expense on the premises of **vliepa** or of a third party, and may demand the compensation for additional expenses.

5.7 In case the Purchaser is in delay with the collection of the Delivery Item due to the fact that the Purchaser is in breach with its contributory obligations by culpable conduct, **vliepa** is entitled to claim from the Purchaser, as contractual penalty, a payment in the amount of 0.1 % of the net order value per day, not to exceed, however, a maximum of 5 % of the total net order value. **vliepa's** right to claim further damages in accordance with the statutory requirements remains unaffected. However, already paid contractual penalties shall be credited to possible claims for damages.

## 6. Delay in Delivery

6.1 In case of a delay in delivery by **vliepa**, any claims for damages of the Purchaser against **vliepa**, in addition to the performance, which are based on or related to the delay in delivery, shall be limited to 0.5 % of the net order value for each full week of delay, not to exceed, however, a maximum of a total of 5 % of the net order value. This limitation shall not apply in case of intent, gross negligence or in the event of culpable injury to life, limb or health by **vliepa**.

6.2 On the grounds of the delay in delivery, the Purchaser may only rescind the contract in compliance with the statutory provision, insofar as **vliepa** is responsible for the delay in delivery. Statutory rights of termination shall remain unaffected hereof.

## 7. Transfer of Risk

The risk of accidental loss and of accidental deterioration shall pass to the Purchaser as soon as **vliepa** has made the Delivery Item available for pickup at the agreed place of delivery and has notified the Purchaser in accordance with section 5.3.

## 8. Warranty and Liability for Defects

8.1 In case the Delivery Item is defective, the Purchaser is entitled to request a supplementary performance. At **vliepa's** choice, the supplementary performance is either provided by rectification or by supplementary delivery. As a general rule, any supplementary performance by **vliepa** is effected on a goodwill basis and without recognition of a legal obligation. An acknowledgement followed by a recommencement of the limitation period requires **vliepa's** express declaration to the Purchaser.

8.2 Place of performance for any supplementary performance shall be the registered office of **vliepa**. In case the supplementary performance fails, the Purchaser is entitled to choose, at its discretion, either the reduction of the price or the rescission of the contract. At **vliepa's** request, the Purchaser shall notify **vliepa** within reasonable time, whether the Purchaser revokes the contract or continues to insist on performance.

8.3 Without delay after delivery, the Purchaser shall notify **vliepa** in writing of any apparent defects (such as incomplete or false deliveries). The Purchaser shall notify **vliepa** in writing of any and all hidden defects immediately after they have been discovered. Failing this, the Delivery Item shall be deemed accepted and the assertion of any warranty claims in this regard shall be excluded. For the compliance with the time limit, the timely dispatch of the notification suffices. The Purchaser shall bear the burden of proof for the defect as such, for the moment of detection of the defect, and for the timeliness of the notification of the defect.

8.4 Any recourse claims of the Purchaser against **vliepa** pursuant to section 478 of the German Civil Code (BGB) are subject to the condition, that the Purchaser has not made any agreements with the ultimate customer exceeding the statutory warranty rights.

8.5 Any claims of the Purchaser based on defects shall become time-barred within 12 months after the statutory commencement of the limitation period; a corresponding cutoff period shall apply in case of claims based on deficiencies. By way of derogation, the statutory limitation period shall apply a) with regard to any and all claims and rights of the Purchaser in case of section 438 subsection 1 no. 1, section 438 subsection 1 no. 2 and section 634a subsection 1 no. 2, section 479 subsection 1 of the German Civil Code (BGB) or in case of a fraudulent non-disclosure of the defect, and b) with regard to claims for damages, in case of an injury to life, body or health, claims under the German Product Liability act, and in case of breaches of duty committed by gross negligence or intent.

8.6 Except for claims for damages and for reimbursement of expenses, the Purchaser shall have no further claims or rights based on defects apart from the claims and rights set forth in this section 8. Claims for damages and for reimbursement of expenses can be asserted in compliance with the provisions set forth in section 9.

## 9. Damages and Reimbursement of Expenses

9.1 **vliepa** is not liable to the Purchaser for damages and reimbursement of expenses, irrespective of the legal grounds (contract, tortious act, breach of contractual obligations, indemnification, etc.).

9.2 The preceding exclusion of liability shall not apply in cases of a liability under the German Product Liability Act, in cases of intent or gross negligence, in cases of culpable injury to life, body or health, and in case of an infringement of essential contractual obligations, i.e. such duties whose fulfillment is

essential for enabling the due performance of the contract and on whose observation the purchaser usually relies and may rely on.

9.3 In case **vliepa** is not liable for intent, gross negligence, injury to life, limb or health or pursuant to the Product Liability Act, **vliepa's** liability due to an infringement of material contractual duties shall be limited to foreseeable damages, which will typically occur in such cases.

9.4 Should **vliepa's** liability be limited or excluded pursuant to the preceding sections, the limitation shall equally apply to the respective personal liability of assistants, vicarious agents, legal representatives or employees of **vliepa**. With regard to **vliepa's** liability by reason of delay in delivery, section 6 shall prevail.

## **10. Export Control Proviso**

Our execution of a contract concluded with the Purchaser is subject to the reservation that no barriers, such as national or international provisions of the German Trade Legislation, embargos and/or other sanctions, are opposed to such execution.

## **11. Place of Performance, Place of Venue, Applicable Law**

11.1 Place of performance for any and all obligations under these terms and conditions shall be the registered office of **vliepa**.

11.2 Exclusive place of venue for any and all disputes out of or in connection with these general terms and conditions shall be Brüggen, Germany. However, **vliepa** is entitled to file an action against the Purchaser at the Purchaser's general place of jurisdiction or any other competent court.

11.3 These provisions as well as any and all contracts between **vliepa** and the Purchaser shall be governed and interpreted in accordance with the laws of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

## **12. Final Provisions**

12.1 **vliepa** is authorized to process and store order-related data in accordance with the provisions of the Federal Data Protection Act.

12.2 Any additions, amendments, or side agreements to these provisions require a contractual agreement between the Purchaser and **vliepa** to become legally effective.

12.3 Should any provision of these terms and conditions be or become invalid, the validity of the other provisions shall remain unaffected thereby.

Brüggen (Germany), January 2017  
**vliepa GmbH**