

## General Terms and Conditions of VGS Automatisierungstechnik GmbH & Co. KG

As an amendment to the ruling law, the following general terms and conditions are the basis of delivery and performance contracts of the enterprise (user) – shortly called VGS. In case there is a deviation or unclarity between German and English versions of these terms, the German version shall prevail.

All deferring regulations of the customer are only binding for VGS if they are expressly confirmed by VGS in writing.

### 1. Conclusion of Contract

The contract is only concluded following a written order confirmation by VGS.

### 2. Pricing

1. A price definition is only binding if set by written order confirmation by VGS. This is under reservation that the details on which the order confirmation is based remain unchanged. VGS' s prices are valid ex works in EURO currency. They do not include the VAT which is valid at time of delivery. Unless stated differently all details refer to the attached offer.
2. Packing, postage/logistics, insurance, and any other freight charges are not included and will be invoiced additionally.
3. Any changes on behalf of the customer and after order confirmation will be charged to the buyer.
4. Construction drawings, tools, samples, and similar pre-works requested by the customer will be invoiced to the latter if the order is not placed. In this respect conditions of order confirmation are valid even before order confirmation.

### 3. Delivery and Performance Period

1. All delivery periods of goods refer to the date of dispatch. They are considered accepted by buyer if the goods leave the factory or if the readiness of dispatch is communicated to the customer to that point of time.
2. The fixed delivery period starts after verification and validation of all technical and commercial details. Generally, delivery periods are not binding. To be binding, dates must be confirmed to the customer in writing.
3. In case the customer must undertake action either for manufacturing the product or for delivery process, the delivery period only begins after this action is completed.
4. Upon exceeding the delivery period, the customer must grant a reasonable extension. This extension shall not be less than three weeks.
5. If delivery is not carried out within time and reasonable extension, VGS is only legally responsible for the invoice value of the goods, which have not been delivered in time, at most to the amount of infidelity.
6. Force majeure, breakdowns and similar unforeseeable circumstances which are not caused by VGS, release VGS from respecting the delivery period during the period of obstruction. Especially In these cases the customer is not allowed to withdraw from contract and/or to raise for any compensation.

### 4. Passing of Risk, Transport Insurance

1. The risk passes on to the customer as soon as the consignment has been handed over to the carrier or if it has left the stock of VGS shipment. If the buyer/customer has to pick up goods at the producer/employer, the risk passes on to the buyer/customer upon declaration of readiness for shipment. If no special shipment regulations were forced by the customer, VGS may arrange shipment of the goods upon best discretion.
2. If the customer does not incite an agreement for transport insurance, VGS can do this to the charges of the customer, without VGS having a general duty to act in such manner.

### 5. Warranty

1. The warranty period is limited to one year for newly produced goods. For used or refurbished goods, warranty is granted for one year; this applying for the newly replaced parts. If the customer is employer, a legal person of public-law or a special property of public-law, warranty is granted for one year.
2. The customer will compare goods against delivery note upon receipt. The customer shall immediately check the goods upon delivery if they are free of faults. Obvious faults must be claimed to VGS immediately in writing, but at least within one week after reception of goods. If obvious faults are not, not punctually or not properly claimed, guarantee is waived for these cases.
3. Other faults must be claimed to VGS within one week after perusal.
4. In case of advertising information or faults in the operation' s manual, VGS is only liable against customers, which are end-users.

#### ADDRESS

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GmbH & Co. KG  
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33758 Schloß Holte-Stukenbrock

#### COMMUNICATION

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Telefax: +49 (0)5207 95755 11  
e-Mail: info@vgs-web.de  
Internet: www.vgs-web.de

#### LEGAL INFORMATION

Geschäftsführung: Steffen Klaer  
Reinhard Siek  
Amtsgericht Bielefeld  
HRA 17153  
Steuer-Nr. 347/5786/1808  
Ust-ID-Nr. DE 3 5117 4244

#### BANK ACCOUNT

Institut:	Deutsche Bank AG	Volksbank in Ostwestfalen
BLZ:	4727 0029	4786 0125
Konto-Nr.:	5 2678 7700	38 0090 0000
IBAN:	DE 5547 2700 2905 2678 7700	DE 4047 8601 2538 0090 0000
BIC (Swift):	DEU TDE3 3472	GEN ODEM 1GTL

5. Small faults which neither essentially minder the value, nor the suitability, nor the usability of the goods are excluded from warranty.
6. VGS is allowed to undertake the subsequent performance of its choice. This implies that it decides whether to deliver new or to eliminate the fault. If the subsequent performance fails, VGS is allowed to a repeated subsequent performance. Even in case of a repeated subsequent performance, VGS decides between a new delivery or an elimination of fault.
7. The customer is only allowed to resign from contract and/or to apply for compensation if the post-executions have failed repeatedly. A claim for compensation is only existing if VGS is to be blamed for culpable negligence or intend. The compensation is to be restricted in every case to the infidelity. Compensation for successive damage faults are excluded if these are not caused intentionally.
8. For security reasons wear- and replacement part must be authorized and assembled to the machine by VGS. Non-compliance with this regulation makes all warranty requests void. CE-Labels and EG certificate of conformity become invalid.

#### **6. Breach of Duty and Liability**

1. VGS liability for breach of duty is restricted to culpable negligence or intended breach of duty.
2. In general VGS is not liable for breach of duty basing on deliveries which have been executed following drawings, printed patterns or samples confirmed and released by the customer as production documents. VGS is not liable for the constructive design and correctness of the reproduced patterns.  
VGS has nevertheless the duty to inform the customer instantly of the non-possibility of a technically translation of the patterns – as far as this could have been recognized.
3. VGS is only liable - for any legal reasons whatsoever - for damages which did not happen directly on the delivered goods only in case of intend, culpable negligence of the owner/of the organs or managing executives, in case of a culpable injury of life, body, health, in case of faults that VGS has concealed maliciously or if VGS has guaranteed for their absence, in case of faults of the delivered goods as far as the legal liability for damages on persons or goods on privately used goods has to be applied. Upon culpable breach of essential contractual duties, VGS is also liable for culpable negligence of non-managing executives and in case of light negligence restricted in the latter case to contract typical damages which could be foreseen reasonably. Further claims are to be excluded.

#### **7. Installation**

If installation has been contractually concluded, it is effected following VGS's valid terms of installation, which form an essential part of these Terms and Conditions and will be handed over to the customer in case of an agreed installation.

#### **8. Drawings – Reservation of Deviation**

1. Construction and factory drawings of the delivered machine will not be handed out. Drawings for foundations, wooden racks and so on will be provided - if necessary – free of charge and on demand. Possible drafts for complete lines, for which VGS reserve the right of owner- and authorship will be invoiced adequately, they are not to be made available to third persons.
2. All reproductions and measurements resulting from drawings and printed matters are not binding, weights and measurements of crates only in that extent if they do not result of ameliorations and model amendments. VGS reserve the right of these ameliorations and amendments. Details about energy consumption and so forth are only non-binding medium estimation values.

#### **9. Protective Installations**

All protective installations will be mounted according to the for VGS valid normal regulations of accident prevention and [EU guidelines](#). The working purpose defined upon order and the constructive conditions of the machine on the date of delivery are binding. Further possible demanded protective regulations are not included in machine price.

#### **10. Payment Conditions**

1. If nothing else has been concluded, all invoices are due immediately and without deduction.
2. In case of exceeding the payment period, VGS is allowed to charge interests of 5% above of the base interest of the European Central Bank, and if the customer is no end-user, of 8% above the base interest rate of the ECB, whereas the prove of a higher damage out of payment default is always possible.

3. Drafts are not, cheques only under the sake of condition and under reserve of credit accepted.
4. If the customer is in default of payment, it is upon VGS to reject the further fulfillment of contract. If there is a substantial danger of pecuniary claims, VGS is allowed to demand payment in advance or sufficient security. If the customer denies payment in advance or security, VGS is allowed to resign from contract and to claim for compensation.
5. Incoming payments are paying off – regardless of opposite directives of the customer – any one time costs, then interests and in the end the main claim, in case of several claims the oldest one at first.

#### **11. Software**

If software is included in the scope of delivery, the customer is granted a non-exclusive right to use the delivered software including its documentation. It is let for the use on the definite delivered article. The use of software on more than one system is prohibited. The customer is only allowed to copy the software, to rework, to translate or to change it from object code to source code to the legally authorized extent (§§ 69a ff German Copyright Act). The customer is committed not to remove or to change manufacturer's details – especially copyright remarks- without prior particular agreement of VGS. All other rights of software and documentation including copies stay with VGS respectively the software furnisher. An allocation of sub-licences is not allowed.

#### **12. Protective Rights**

1. If VGS has to deliver or to perform following any drawings, models, patterns or using pieces which have been furnished by the customer, the latter is obliged to ensure that no protective rights of third parties have been broken. VGS will inform the customer about known rights of third parties. The customer has to deliberate VGS of any claims of third parties and to compensate for any damage incurred. If a third party prohibits referring to its protective rights to VGS to perform, to produce or to deliver, VGS is allowed to stop the works and to claim for compensation – without checking the legal position.
2. Any copyrights or possible protective rights on the models, forms and devices, drafts and drawings designed by VGS or charged third parties do belong to VGS.

#### **13. Reservation of Proprietary Rights**

1. The delivered goods remain in VGS' s possession until complete customer's payment of all claims of VGS against the customer existing on the date of invoice.
2. In case of alteration or use of the reserved goods, VGS is entitled of the co-ownership to the value of the situation of the reserved goods before alteration or use on the resulting good. A disposal of the reserved goods is only allowed in a proper business. If the customer disposes the good, the claim towards the purchaser passes on to VGFS in the moment of sale. The customer has to charge the buyer to pay directly to VGS in the course of the payment duty resulting of the disposal. Exceptions from this need to be confirmed in written between VGS and the customer.
3. Furthermore, all instructions concerning the reserved goods are inadmissible, especially chattel mortgage or mortgage.
4. In case of execution of the customer's property and if – following this – the reserved goods are concerned, VGS has to immediately be informed in written giving all necessary details (instrument of execution, reference), if necessary including all execution reports.
5. All objects which have been put to the disposal of the customer and which have not been part of the work performance as such (f. ex. Drafts, construction drawings, tools and so on) remain in the possession of VGS.

#### **14. Place of Performance and Jurisdiction**

1. Place of Performance is VGS's headquarter at Schloß Holte-Stukenbrock.
2. In case the customer is an employer, a legal person of public-law or a special property of public-law place of jurisdiction is Schloß Holte-Stukenbrock.

#### **15. Final Requirements**

Any non-validity of single requirements does not touch the validity of the remaining requirements. A non-valid requirement is considered as replaced by an economically equal requirement. All statements, which consider the validity of contractual relation do require the written form. Any amendments of the necessity of drafts in written requires a written draft itself.