

General Terms and Conditions of Sale of Virtus GmbH (GTT)

§ 1 General Terms, Scope

- 1.1 These General Terms and Conditions of Sale (T&C) apply to all our business relationships with our customers.
- 1.2 The T&C apply particularly to contracts for the purchase and/or delivery of movable property (hereinafter also: goods). These T&C shall also apply in their respective version as a framework agreement for future contracts for the sale and delivery of goods with the same customer without any requirement on our part to refer to them again in each individual case.
- 1.3 Our T&C shall apply exclusively. Any deviating, conflicting or supplementary Terms and Conditions of our customer shall only become part of the contract if and to the extent that we have expressly agreed to them in writing.
- 1.4 Any individual agreements reached with the customer in individual cases (including collateral agreements, supplements and changes) shall have precedence over these T&C. Such agreements shall require a written contract and/or our written confirmation to be effective.
- 1.5 Any legally relevant declarations and notifications to be submitted to us by the customer after conclusion of the contract (e.g. the setting of deadlines, notice of defect, declarations of withdrawal or reduction of the price) shall require the written form to be effective.
- 1.6 Any reference to the application of statutory provisions are for the purposes of clarification only. The statutory regulations therefore also apply without such a clarification insofar as they are not directly changed or are explicitly excluded in these T&C.

§ 2 Conclusion of Contract

- 2.1 Our offers are always subject to change and non-binding. This also applies if we provide the customer with catalogues, technical documentation (e.g. drawings, plans, calculations, costing and references to DIN standards), other product descriptions and documents – even in electronic form – in which we reserve ownership and copyright. The customer may not provide such documents to third parties. They must be returned to us at our request. Any pictures, performance and consumption values of our machines provided in our sales documents must be considered approximations only. It is incumbent on the customer to ensure that the media necessary to operate the equipment according to our specifications (e.g. electricity, gas, water, vents, openings etc.) are sufficiently available. He shall also obtain official permits; he shall in particular require the permission of the chimney inspector if vents are installed or existing chimneys are modified.
- 2.2 The purchase order from the customer is deemed to be a binding offer to conclude the contract. Unless stated otherwise in the order, we shall be entitled to accept this offer within four weeks after receipt thereof.
- 2.3 Acceptance can either be declared in writing (e.g. through the order confirmation) or through the supply of goods to the customer.

§ 3 Delivery, Delivery Date/Time and Default of Delivery

- 3.1 We reserve the right to make technical changes insofar as the scope of delivery is not affected.
- 3.2 Unless delivery dates have been expressly agreed to individually, we consider statements regarding delivery dates as non-binding. Any agreed delivery time shall not start before the customer has provided the necessary documents, permits and approvals or has made the agreed down payment. An agreed delivery date shall be deemed met if the goods are ready for shipment within the agreed time and the customer has been notified thereof and/or if the goods have been released for shipment by the factory. No installation services, even if taken over by us, must be provided within a binding agreed delivery time, unless we have expressly agreed otherwise.
- 3.3 Should we be unable to meet an agreed and binding delivery date for reasons for which we cannot be held responsible (impossibility of performance), we will immediately notify the customer thereof and inform him of a new anticipated delivery date at the same time. Should performance also be impossible within the new delivery times, we shall be entitled to withdraw from the contract in whole or part; in this case we will immediately refund any payments already made by the customer. Such impossibility of performance shall be deemed to exist in particular if, where we have entered into covering transactions equivalent in all respects, our suppliers fail to supply us in a timely manner, if neither our supplier nor we are at fault or if we are not obligated to procurement in individual cases. Our statutory rights of withdrawal and termination and the legal provisions concerning the cancellation of the contract if the Transport packaging and all other packaging in accordance with the Packaging Ordinance is non-returnable and becomes the property of the customer with the exception of standard pallets (Euro pallets).
- 3.4 The occurrence of default of delivery is determined by the statutory provisions. However, a written reminder from the customer shall be required in every case. Should we be in default of delivery, the customer may demand payment of a contractual penalty for his damages caused by delay. Such penalty shall amount to 0.5% of the net price (delivery value) for each completed calendar week of delay, no more, however, than 5% of the delivery value of the delayed goods or the delayed manufactured installation.
- 3.5 Any claims for damages shall be limited to cases of intent and gross negligence, also on the part of our legal representatives and agents.

§ 4 Delivery, Transfer of Risk, Acceptance, Default of Acceptance

- 4.1 Partial deliveries are permissible.
- 4.2 The goods are delivered ex warehouse, which is also the place of performance. On request and at the expense of the customer, the goods can also be sent to another destination (sales shipment). Unless agreed otherwise, we shall be entitled to determine the manner of shipment (in particular the shipping company, transport route, packaging) ourselves. We will only take out transport insurance at the express wish of the customer. In case of damages in transit that are covered by the insurance policy, we shall have the option of either taking the amount insured and providing a replacement or demanding payment of the purchase price from the customer against assignment of the amount insured.
- 4.3 The risk of accidental loss and accidental deterioration of the goods shall pass to the customer no later than upon transfer of the goods. However, in case of a sales shipment the risk of delay shall already pass to the customer upon delivery of the goods to the forwarder, carrier or another person or establishment charged with the delivery of the goods. Insofar as an acceptance procedure has been agreed on, this shall be authoritative for the passing of risk. In all other respects, the statutory provisions of the law on contracts for services shall also apply to an agreed acceptance accordingly. Transfer and/or acceptance shall be deemed to have been effected if the customer is in default of acceptance.
- 4.4 If the customer is in default of acceptance or if he violates other duties to cooperate, or if our delivery is delayed for other reasons attributable to the customer, we shall be entitled to demand compensation for resulting damages, including any extra expenditures (e.g. storage costs). For this purpose, we charge a lump-sum penalty amounting to 1.0% of the net price (delivery value) of the goods per calendar week, but no more than 10% of the delivery value, beginning with the agreed date of delivery or, if no such date has been agreed, with notification of readiness for shipment. Our entitlement to furnish proof of greater damage and our statutory rights (particularly reimbursement of additional expenses, appropriate compensation, termination) shall remain unaffected. However, the lump-sum shall be offset against further monetary claims. The customer retains the right to demonstrate that no damage at all has occurred or that the damage that occurred is significantly less than the lump-sum.

§ 5 Prices and Payment Terms

- 5.1 Unless agreed otherwise in individual cases, all prices must be paid net plus applicable VAT without any discount. Payments must always be made in cash. Money orders, cheques and bills of exchange are only accepted upon special agreement and only on account of payment, taking into account all collection and discount charges.
- 5.2 Unless agreed otherwise in individual cases, the agreed prices ex warehouse shall apply. In case of a sales shipment, the customer shall bear the transport costs ex warehouse and the costs of any insurance coverage requested by him. Any customs duties, fees and other public levies shall likewise be borne by the customer.
- 5.3 If, in addition, we are commissioned to assemble and/or install the delivery items and supervise their connection, we will make a service technician available to the customer at the applicable service rate. In all other respects the provisions of Clause 9 shall apply.
- 5.4 The customer is in default of payment upon expiry of the above payment terms. Should the customer be in default by more than one payment, all existing claims against the customer shall become due immediately. He shall pay default interest of 8% p.a. over the base rate on the purchase price during the time he is in arrears. We reserve the right to claim further damages caused by delay. Our claim for the commercial maturity interest remains unaffected.
- 5.5 Despite any Terms and Conditions of the customer to the contrary, we are entitled to apply any payments to older outstanding debt first. If costs and interest charges have already accrued, we are entitled to credit payments first to the costs, then to the interest and finally to the outstanding invoices. Likewise, we are entitled to assign claims arising from our business relationship.
- 5.6 The customer shall only have a right to setoff or retention if his counterclaim has been upheld by a court of law or is undisputed. In case of defects of delivery Clause 7.8 remains unaffected.
- 5.7 If, after conclusion of the contract, it becomes evident that our claim for the purchase price is at risk due to the customer's insufficient financial capacity (e.g. the opening of insolvency proceedings), we are by law entitled to refuse performance and – after granting a reasonable grace period – to withdraw from the contract (Sect. 321 BGB - German Civil Code). In the case of contracts for the manufacture of specific items (custom-built products) we have the right to withdraw immediately; the statutory provisions concerning the lack of necessity to set a deadline remain unaffected.

§ 6 Reservation of Title

- 6.1 We reserve title to all goods sold until all our current and future claims arising from the purchase contract and from a current business relationship (secured claims) have been paid in full.
- 6.2 The goods subject to reservation of title may neither be pledged nor assigned by way of security to third parties prior to full payment of the secured claims. The customer shall immediately inform us in writing if and to what extent third parties assert claims to our goods.
- 6.3 If the customer acts in violation of the contract, in particular in case of default of payment, we are entitled to withdraw from the contract in accordance with statutory provisions and to demand the surrender of the goods based on the reservation of title and/or withdrawal. Should the customer fail to pay the purchase price due, we may only assert these rights if we have first granted the buyer a reasonable grace period for payment without result or if granting such grace period is not required by law.
- 6.4 The customer is entitled to resell and/or process the goods under retention of title in the ordinary course of business. In this case the following provisions shall apply in addition.
 - 6.4.1. The reservation of title covers the products which are produced by processing, mixing or combination of our goods at their full value, whereby we are deemed to be the manufacturer. If third-party ownership rights continue to exist upon processing, mixing or combination with our goods, then we shall acquire co-ownership in relation to the invoice values of the processed, mixed or combined goods. Furthermore, the same shall apply to the product produced in this way as to the goods delivered under reservation of title.
 - 6.4.2. The customer hereby already assigns to us the claims against third parties arising from the resale of the product/surrogate in total or in the amount of our possible co-ownership share under the above clause as collateral. We hereby accept the assignment. The obligations of the customer stated in Clause 6.2 shall also apply in view of the assigned claims.
 - 6.4.3. The customer remains entitled to collect the claim in addition to us. We undertake not to collect the claim as long as the customer meets his payment obligations towards us, is not in default of payment, no application has been filed for the opening of insolvency proceedings and no other lack of his ability to pay exists. However, in case of any of the above conditions we are entitled to demand of the customer to inform us of the assigned claims and their debtors, to provide us with all information necessary for collection, to hand over the relevant documents and inform the debtors (third parties) of the assignment.

§ 7 Factoring

We are entitled to sell our claims arising from individual business relationships to a factor. To this end, all payments shall be exclusively made, with the effect of discharging the debt, to BNP Paribas Factor GmbH, Willstätterstraße 15, 40549 Düsseldorf, to which we have assigned all current and future claims arising from this business relationship. We have also assigned our reservation of title to the above factor. The respective notice regarding the sale of these claims can be found on our invoice.

§ 8 Warranty of the Customer

- 8.1 The statutory regulations shall apply to the rights of the customer in case of defects of quality and title (including wrong deliveries and shortfalls as well as improper assembly or faulty assembly instructions) insofar as not provided for otherwise below. The basis of our liability for defects shall be the agreement made concerning the quality of the goods. All product descriptions that are subject of the individual contract and part of our offers and order confirmations shall serve as an agreement about the quality of the goods, irrespective of whether the product description comes from the customer, the manufacturer or us. In the absence of any agreement on quality, the statutory regulations shall determine whether a defect exists or not (Sect. 434 (1) sentences 2 and 3 BGB, Sect. 633 (2) sentences 2 and 3 BGB). We shall not be held liable, however, for any public statements by the manufacturer or other third parties (e.g. advertising messages).
- 8.2 Warranty claims can only be asserted in case of new goods. Any warranty claims of the customer due to defects of the delivered new goods shall be limited to a maximum of one year from the day of the transfer of risk. However, should the installation/equipment be a structure or thing that has been used as a structure in accordance with its usual manner of use and has caused its defectiveness (building material), Sect. 438 (1) No. 2 BGB and/or Sect. 634a (1) No. 2 BGB shall apply if the parties have agreed on acceptance. The warranty claims shall become void if our operational and maintenance instructions are not observed diligently. The warranty does not cover natural wear and tear (e.g. gaskets) and components that do not impair the functionality of the product (e.g. glass, outer panelling, doors and handles, etc.). Neither does it cover damages arising after the transfer of risk due to faulty or negligent handling, excessive strain, unsuitable operating materials or other influences not assumed under the contract. The above limitation periods of the law on contracts for sale/services do not apply if the application of the ordinary statutory limitation (Sections 195, 199 BGB) results in a shorter period of limitation in individual cases. The limitation periods under the Product Liability Act shall in any case remain unaffected. Otherwise the warranty claims of the customer according to Clause 9 shall apply, and in all other respects the only statutory limitation periods apply.
- 8.3 The discount for specialized retailers covers delivery, setup and instruction of the end customer regarding the delivered equipment by the specialized retailer as well as the call-out charges and labour costs of the warranty service. Any warranty claims against us shall be limited to the provision of replacement parts. Any defective parts shall be returned to us together with a warranty form to be filled out by the customer.
- 8.4 Warranty claims shall be excluded for any goods sold as used goods, damaged goods, remaining stock or returned goods (so-called 1 B goods).
- 8.5 The customer's warranty claims are subject to compliance with the customer's statutory duty to inspect the goods and give notice of defect (Sect. 377, 381 HGB – German Commercial Code). Should a defect be found during the inspection or at a later time, we shall be notified thereof immediately after detection of such defect, no later, however, than prior to the expiry of the limitation period. It shall be sufficient to submit such notice in writing in due time. Irrespective of the above duty to inspect and give notice of defect, the customer shall give notice of obvious defects (including wrong deliveries and shortfalls) immediately upon delivery; it shall be sufficient to submit such notice in writing in due time. If the customer fails to give due notice of defect, any liability on our part for the unreported defect shall be excluded.
- 8.6 The customer shall give us the time and opportunity for the subsequent performance owed, and in particular to hand over the defective goods for inspection. In the case of substitute delivery the customer shall return the defective goods to us in accordance with statutory provisions. Any subsequent performance does not include the removal nor the reinstallation of the defective goods unless we were originally responsible for the installation. We shall bear the expenses necessary in connection with the inspection and subsequent performance, in particular transport, travel, labour and material costs, (not costs for removal and installation), if an actual defect exists. If such a defect actually exists, we shall also bear the costs for removal and installation if we were originally responsible for the installation. However, should the customer's demand to eliminate the defect turn out to be unjustified, we can demand that the customer reimburse the costs incurred hereby. We shall be entitled to make subsequent performance contingent on the customer paying the due purchase price. However, the customer is entitled to hold back a part of the payment commensurate with the defect.
- 8.7 In urgent cases, e.g. when operating safety is endangered or to avert disproportionate damage, the Customer has the right to repair the defect and to demand reimbursement for the objectively required expenses from us. We shall be notified of such self-repair immediately and preferably beforehand. The right to self-repair shall not apply if we were entitled to refuse equivalent subsequent performance in accordance with statutory provisions.
- 8.8 If subsequent performance has failed or if an appropriate grace period set by the customer for subsequent performance has passed without results or is dispensable in accordance with statutory provisions, the customer may withdraw from the contract or reduce the purchase price. However, there is no right to withdraw if the defect is non-material.
- 8.9 Any claims of the customer for damages or reimbursement of futile expenses are subject to the limitations of Clause 8 and shall be excluded otherwise.

§ 9 Other Liabilities

- 9.1 Unless otherwise provided in these T&C including the following provisions, we shall be liable in accordance with the relevant statutory provisions in case of breach of contractual and non-contractual duties.
- 9.2 In case of claims for damages – irrespective of the legal grounds – we shall be liable in case of intent and gross negligence. In case of ordinary negligence, we shall be liable only
 - 9.2.1. for injury to life, limb or health,
 - 9.2.2. for damages resulting from a breach of material contractual obligations (obligation the proper fulfillment of which is essential to the execution of the contract and compliance with which the contracting partner can usually rely on); in this case, however, our liability is limited to the typical foreseeable damages.
- 9.3 The limitations under Clause 9.2 shall not apply insofar as we have fraudulently concealed a defect or have assumed a guarantee for the condition of the goods. The same shall apply for claims of the customer under the Product Liability Act.
- 9.4 The customer may only withdraw from or terminate the contract due to a breach of duty that is not based on a defect if we are responsible for such breach of duty. Any right of the customer to terminate the contract at any time (in particular according to Sections 651, 649 BGB) shall be excluded. In all other respects the statutory requirements and legal consequences shall apply.

§ 10 Damage Claims of Virtus GmbH

- 10.1 If we expressly agree to the cancellation of an order placed with us as binding, the customer shall pay us 30% of the total value of the order. If the customer fails to fulfil the contract and is at fault, we shall be entitled to claim damages in accordance with statutory requirements. In the case of culpable non-fulfilment of the contract the damages amount to a lump sum of 30% of the agreed (net) payment. If the delivery item has been delivered, the above lump sum shall increase by the transport and relabelling costs incurred. Should the customer already have paid contractual penalties according to Clause 3.4 and 4.4, these payments shall be credited towards the lump sum damages. Our right to claim greater damages and our statutory claims (in particular for additional expenses, reasonable compensation, termination, withdrawal, damages) shall remain unaffected; however, the lump sum shall be credited towards further monetary claims.
- 10.2 The customer shall be entitled to prove that no damage occurred or that the damage was much less than the lump sum.

§ 11 Customer Service

- 11.1 Should we also have been commissioned with the repair and servicing of the goods, we will make service technicians available on request who shall be paid for by the customer at our applicable labour rates. In all other respects the provisions under Clause 9 of these T&C shall apply.
- 11.2 Service technicians are not authorized to give guarantees or make other declarations which would be binding for us. Any mistakes made and damages caused by our service technicians are subject to the liability limitations under Clause 8.

§ 12 Applicable Law and Place of Jurisdiction

- 12.1 These T&C and all legal relations between us and the customer shall be subject to the laws of the Federal Republic of Germany to the exclusion of all international and supranational (contractual) law, in particular the UN Convention on Contracts for the International Sale of Goods.
- 12.2 However, the conditions and consequences of the reservation of title in accordance with Clause 6 shall be subject to the law governing the respective storage site of the goods if, under said law, a choice of law in favour of German law is not permitted or unenforceable.
- 12.3 The exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our registered place of business in Hamm/Weßphalia. However, we shall also be entitled to bring action at the customer's place of jurisdiction.

§ 13 Final Provisions

- 13.1 Should one or more provisions of this contract or these T&C be invalid, this shall not affect the validity of all other provisions of this contract and these T&C.
- 13.2 Any subsequent supplements or changes to this contract require the written form.