

EuropTec Vehicle Display Glass AG hereinafter referred to as "VDG"

1. General

The Terms and Conditions of Sale and Delivery (hereinafter also referred to as "sales terms") of VDG apply exclusively to all sales, supplies and services of VDG to the customer; contradictory terms of the customer or those that deviate from the sales terms of VDG are not recognised by VDG, unless VDG has expressly agreed in writing to their validity. The exclusion of the customer's terms applies also when VDG's General Terms and Conditions of Sale and Delivery do not contain a specific provision on specific points. VDG's sales terms also apply if VDG carries out to delivery to the customer without reservation, despite knowledge of contradictory or deviating conditions of the customer. The customer's placing of an order or acceptance of supplies or services from VDG is considered recognition of these General Terms and Conditions of Sale and Delivery.

2. Offers, conclusion of contract

All offers made by VDG are subject to change. They merely represent invitations to place orders. The customer is bound by their order as an application of contract for 14 calendar days. Contracts first come into existence upon written confirmation of the order. The written order confirmation may be replaced by delivery by VDG, in which case the dispatch of the delivery is decisive. The order confirmation applies only on the condition that any outstanding payments are settled and that a credit check of the customer undertaken by VDG provides no negative information.

3. Order, order confirmation, scope of delivery and services, changes to the order and cancellations

3.1 VDG issues an order confirmation after receipt and acceptance of the order. This confirmation alone is definitive for the scope and execution of the delivery.
3.2 VDG's supplies and services are defined conclusively in the order confirmation. Services not included must be agreed additionally in writing. Supplies and services, particularly fixtures, dimensions and weight of products, may deviate slightly from the order confirmation. Such deviations shall be deemed in conformity with the contract so long as they do not adversely affect the essential qualities of the supplies and services. VDG is entitled to under/overdelivery of +/-10% for all deliveries due to unforeseeable basic production-related conditions, provided no other arrangements have been confirmed in writing.
3.3 If the customer does not object to the order confirmation in writing to VDG within 7 days of dispatch of the order confirmation, the order confirmation and, in particular, the specifications contained therein shall be deemed binding.
3.4 Changes to orders or cancellations after expiry of the period specified in 3.3 above are binding for VDG only if VDG agrees thereto in writing. Any costs arising from the change to the order shall be borne by the customer.

4. Plans, technical documentation, samples and prototypes, confidentiality

4.1 VDG and the customer undertake to utilise all documentation (including samples and prototypes) and knowledge received on the basis of the business relationship only for the jointly pursued purposes, to maintain their secrecy vis-à-vis third parties and to not make these available to third parties, in whole or in part, unless VDG agrees thereto in writing. Documentation must be returned to VDG without prompting if an order based on the documentation is not placed.
4.2 VDG retains all rights, in particular property rights and copyright, to the plans, technical documentation, samples and prototypes prepared by it.
4.3 Specifications in technical documentation from VDG are binding only if expressly guaranteed to the customer in writing. The properties of samples and/or specimens become a component of the contract only if expressly agreed.

5. Prices

5.1 The prices according to the written order confirmation apply. Unless otherwise agreed or offered, the prices are in EURO, net, ex works Incoterms 2010, and exclude packaging, VAT and any deductions. All expenses, taxes, charges, fees, duties and similar shall be borne by the customer.
5.2 Payment methods other than cash or bank transfer require separate agreement between VDG and the customer; this applies in particular to the issuance of checks and bills of exchange.
5.3 VDG is entitled to increase the remuneration unilaterally in the case of an increase in material production/procurement costs and/or product procurement costs, salary and incidental wage costs, social security duties, energy costs and costs due to environmental requirements, and/or currency fluctuations and/or changes in customs duty, and/or freight rates and/or public charges, when these directly or indirectly affect the goods production or procurement costs or costs for our contractually agreed services and when there are four months between conclusion of the contract and delivery. An increase in this sense is excluded if the cost increase in some or all the aforementioned factors is offset by a cost reduction in some of the other factors mentioned in terms of the overall costs to us for the delivery. If the above-mentioned cost factors decrease without the cost reduction being offset by the increase in other cost factors mentioned, the cost reduction shall be passed on to the customer in the context of a price reduction. If the new price due to our right to price adjustment as stipulated above is 20% or more higher than the original price, the customer is entitled to withdraw from contracts which are not yet completely fulfilled. However, the customer may only exercise this right immediately after notification of the increased price.
5.4 A right of retention or right of set-off exists for the customer only in regard to such counterclaims that are uncontested or legally binding.
5.5 The customer may only exercise his right of retention insofar as their counterclaim is based on the same contractual relationship.

6. Terms of payment

6.1 Payments shall be made to the registered address of VDG as net price without any deductions for cash discount, expenses, taxes, charges, fees or duties of any kind, within 30 days of the date of invoice.
6.2 Payments shall also be made on the maturity date when delays occur after dispatch ex-works for reasons that are not attributable to VDG. The customer is obligated to make complete and timely payment also when they assert/wish to assert counterclaims against VDG or claim/wish to claim credit from VDG for returned goods.
6.3 In the event of payment deadlines being exceeded, default consequences occur automatically without further reminders. The customer is obligated to pay the statutory default interest on any payments not made before the expiry of the payment period.
6.4 The offsetting of claims of the customer with claims of VDG is excluded with the written approval of VDG.
6.5 VDG reserves the right to make the acceptance of an order above a certain order volume (which is decided by VDG at its own discretion) contingent on the agreement of a reasonable pre-payment; this pre-payment shall be invoiced by VDG and becomes payable immediately after successful confirmation of the order.
6.6 VDG is entitled to make the acceptance of orders or the delivery of outstanding orders contingent on compliance with the payment terms and on the payment of all outstanding receivables from earlier orders. If the customer fails to comply with the payment terms, VDG is entitled to cancel already confirmed orders.

7. Retention of title and exploitation right

VDG remains owner of its entire deliveries until it has received full payment pursuant to the contract. With conclusion of the contract, the customer authorises VDG to enter the reservation of ownership into the official register at the expense of the customer and to fulfil all formalities in this regard. The customer shall maintain the delivered objects at their own expense for the duration of the reservation of title and insure the objects to the benefit of VDG against theft, breakage, fire, water and other risks. In addition, the customer shall take all measures to ensure that the ownership of VDG is neither impaired nor removed. In the event of commingling of goods, VDG is co-owner in proportion to the value of the various components. If the customer fails to fulfill their acceptance and/or payment duties also after expiry of a grace period of 30 days, VDG is entitled for the duration of the default in acceptance and/or payment to sell the goods ordered by the customer freely and without hindrance to a third party, regardless of any rights which the customer might otherwise enjoy (e.g. patent rights, legal protection for company names, trademarks, samples, models, and copyright).

8. Delivery period

8.1 The delivery period begins as soon as the contract is concluded and, in any case, when payments for orders or agreed securities are made. Binding delivery dates and periods must be expressly agreed in writing.
8.2 The delivery period extends appropriately:
a) when VDG does not receive in time the details it requires to fulfil the contract or when the customer subsequently amends these;
b) when hindrances occur which, despite due care, VDG is unable to avoid, irrespective of whether these occur with VDG, the customer or a third party. Such hindrances include epidemics, mobilisation, war, revolution, serious operational disruption, accidents, labour conflicts, late or deficient delivery by subcontractors of the required raw materials, semi-finished or finished products, the need to scrap important work pieces, official actions or omissions by any state authorities or public bodies, natural catastrophes, and other occurrences of force majeure;
c) if the customer or a third party is behind schedule with the work it has to execute, or with the performance of its contractual obligations, in particular if the customer fails to comply with the terms of payment.
8.3 Failure to meet delivery periods does not entitle the customer to compensation for damages but does entitle them to rescission of the contract after an appropriate grace period of at least 30 days has expired without remedy.
8.4 Delay in delivery of goods or performance of services does not give the Customer any rights or claims except for those expressly named in this Section 8. In addition, the exclusion of liability under Section 13 applies.

9. Tools and moulds

9.1 Customer-specific tools and moulds, including accessories, remain the property of VDG, even if the customer has paid a share of the costs of their manufacture.
9.2 Unless otherwise contractually agreed, VDG shall, at its own expense, provide for the storage and maintenance of the customer-specific tools and moulds for subsequent orders for a period of 3 years after the last delivery. Upon request and at the expense of the customer, customer-specific tools and moulds shall be stored and maintained by VDG for a longer period which is to be contractually agreed. Customer-specific tools and moulds which are not used during the 3 years or during the exercise of the contractually agreed option must not be stored any longer by VDG.

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10. Transfer of benefit and risk

10.1 Benefit and risk are transferred to the customer at the latest when the deliveries leave the factory.

10.2 If there is any postponement of the handover, or of delivery, if delivery has been agreed at the request of the customer or for other reasons for which the supplier is not responsible, the risk is transferred to the customer no later than the time originally fixed for the handover or delivery. From that point onward, the goods are stored at the expense and at the risk of the customer.

11. Inspection and acceptance of deliveries and services

11.1 VDG shall examine the deliveries and services to the customary extent prior to dispatch. Should the customer require more detailed scrutiny, this and the costs thus incurred must be contractually agreed.

11.2 The customer must inspect the deliveries and services within 10 working days of receipt of the goods or completion of services and inform the supplier immediately and in writing of any shortages or defects. Visual defects discovered by the customer in the course of this inspection (e.g. scratches, spot faults) which correspond to an average outgoing quality of up to 10% based on the visual final inspection are considered to be defects worthy of notification but do not entitle the customer to block or refuse acceptance of the entire delivery.

11.3 If the customer fails to report defects within 10 working days, the deliveries or services are deemed to be accepted/approved.

11.4 VDG must remedy any defects reported to it in accordance with Section 11.2 as quickly as possible, subject to the right of choice pursuant to Section 12.3, and the customer must provide the opportunity to do so.

11.5 Deficiencies of any kind in supplies or services provided by the supplier shall not entitle the customer to any rights or claims other than those expressly stipulated in Sections 11 and 12 (warranty, liability for defects). In addition, the exclusion of liability under Section 13 applies.

12. Warranty, liability for defects

12.1 VDG's warranty lasts for 12 months from delivery of goods or from completion of services. Claims under warranty may only be made by the customer if the customer, for their part, has fulfilled their contractual obligations, in particular their payment obligations. The customer's claims under warranty lapse prematurely if the customer or third parties carry out modifications or repairs to the goods or services supplied, or if, in the event of a defect, the customer does not immediately take all appropriate steps to minimise the damage and does not give VDG the opportunity to remedy the defect.

12.2 The customer shall offer VDG the opportunity to inspect the contested goods. To this end, the customer shall make the contested goods available to VDG upon appropriate request. If the customer fails to comply with this request, their claims under warranty become void.

12.3 Unless otherwise contractually governed, VDG is obligated to either improve or replace (according to VDG's choice) all parts of the deliveries and services that become demonstrably defective or unusable as the result of poor materials or defective workmanship before the expiry of the warranty period, as quickly as possible, or to reimburse the portion of the purchase price/remuneration attributable to these parts. The costs of dismantling, transport and re-assembly are charged to the customer in the absence of any written agreement to the contrary. Replaced parts become the property of VDG.

12.4 Excluded from the warranty and VDG's liability is damage that has not demonstrably arisen as a result of poor materials or defective workmanship but rather is due, for example, to natural wear and tear, inappropriate storage or handling, inadequate maintenance, failure to observe operating instructions, excessive loading, unsuitable operating resources, chemical or electrolytic influences, assembly work not carried out by VDG, or due to any other reasons for which VDG is not responsible.

12.5 Excluded from the warranty and VDG's liability are defects which are first reported once installed in components of the customer or of its customers.

12.6 Defects of any kind in supplies or services provided by the supplier shall not entitle the customer to any rights or claims other than those expressly stipulated in 12.2 above. In addition, the exclusion of liability under Section 13 applies.

12.7 All warranty and compensation claims of the customer become time-barred one year after delivery of the goods or completion of the services.

13. Exclusion of other liabilities of VDG

All cases of contractual violation and the legal consequences thereof as well as all claims of the customer against VDG, irrespective of the legal grounds on which they are based, are definitively governed in these terms and conditions. Excluded in particular are all claims, not expressly mentioned, on the part of the customer against VDG for damages, reduction of the purchase price, cancellation of the contract or withdrawal from the contract. The liability of VDG is limited to the value of its deliveries and services. VDG is not liable for damages to items owned by the customer or third parties, which have been handed over to it for processing or storage. The customer can in no case assert claims for compensation for damage which has not been caused to a delivered item itself, such as, specifically, loss of production, loss of use, loss of orders, loss of profit and any other indirect or direct damages. This exclusion of liability does not apply in the cases listed below, for the existence of which the burden of proof lies with the customer:

- a) in the case of intentional or grossly negligent misconduct of the management of VDG or executive employees who have similar functions as the management; for intentional misconduct of auxiliary personnel,
- b) in the case of fraudulent concealment of defects or of the assumption of a guarantee of quality,
- c) for the liability based on the Product Liability Act ("Produkthaftungsgesetz") as well as for physical injury (injury to life, body or health),
- d) so far as is not precluded by any mandatory laws.

14. Property rights

Where VDG is required to supply goods or services on the basis of sketches, drawings, models or samples, which have been provided to it by the customer, or on the basis of other forms of information from the customer, the customer warrants that no protected rights of third parties are infringed by the manufacture and supply of these products or the performance of these services. The customer indemnifies the VDG from all damage incurred if the protected rights of third parties are infringed as a result of instructions from the customer.

15. Prohibition of assignment

The customer is not entitled to assign their claims against VDG to third parties without VDG's agreement in writing.

16. Place of jurisdiction, applicable law

16.1 Exclusive place of jurisdiction for all disputes between the parties is Oftringen/AG, Switzerland. This agreement on the place of jurisdiction does not apply where precluded on the basis of mandatory law. However, VDG is also entitled to bring legal action against the customer at their general place of jurisdiction.

16.2 The contracts between the customer and VDG are exclusively governed by Swiss law to the exclusion of the United Nations Convention on Contracts Concerning the International Purchase and Sale of Goods (Vienna Sales Convention) of 11 April 1980. Should mandatory foreign law be applicable in an isolated instance, VDG's Terms and Conditions of Sale and Delivery shall be interpreted so that the commercial purpose pursued by them is preserved to the greatest extent possible.

17. Severability clause

If one or more provisions of these General Terms and Conditions of Sale and Delivery are or become invalid, the validity and enforceability of the remaining clauses is not affected or impaired. The parties undertake in this case to replace the invalid provision with a legally effective substitute provision that comes closest to the economic intentions of the original provision.