

General Terms and Conditions of Sale and Delivery

§ 1 Validity

(1) All deliveries, services and offers of Variobend-ASCO GmbH, Am Pfaffenkogel 9, D-83483 Bischofswiesen - hereafter referred to as "Vendor" - shall take place exclusively on the basis of these General Terms and Conditions of Delivery. They shall be an integral part of all contracts, which the Vendor enters into with his contracted partners (hereafter referred to as "Purchaser") regarding deliveries and services offered by the Vendor. They shall also be applicable for all future deliveries, services or offers with the Purchaser, even if they are not again separately agreed.

(2) Purchaser or third party terms and conditions do not apply, even if the Vendor does not explicitly reject their validity on a case-by-case basis. Even if the Vendor makes reference to correspondence containing or referencing Purchaser or third-party terms and conditions, this shall not constitute acceptance of the same.

§ 2 Offers and conclusion of contract

(1) All offers made by the Vendor shall be binding and compulsory if not explicitly marked as non-binding.

(2) The legal relationship between the Vendor and Purchaser shall solely be governed by the written purchase contract entered into including these General Delivery Conditions. The purchase contract shall completely reflect all agreements between the parties to the contract. Oral promises by the Vendor before the conclusion of this contract shall not be legally binding and oral agreements by the contracting parties shall be replaced by the written contract, unless it is expressly stated therein that they will continue to be binding in each case.

(3) Additions and modifications to agreements made, including these General Terms and Conditions of Sale and Delivery, shall only be valid in writing, whereby an agreement made by telefax or e-mail shall satisfy the requirement for the written form.

(4) The Vendor also reserves the title and intellectual property rights to all offers and quotes, issues, as well as drawings, pictures, calculations, brochures, catalogues, models, tools and other documents and aids provided to the Purchaser. Without the express consent of the Vendor, the Purchaser may not make these objects or their content, accessible to third parties, may not have them used or reproduced, either by himself or by third parties. Upon the request of Vendor, the Purchaser must return completely any such above-mentioned objects to the Vendor and destroy any copies made if they are no longer required in the regular course of business or if negotiations do not result in conclusion of a contract.

§ 3 Prices and payment, due date, default

- (1) The prices shall apply to the scope of supply and service listed in the offer. The prices are in euros plus the applicable value added tax, fees and other public charges, insurance costs, transport and loading costs as well as packaging costs.
- (2) Insofar as the agreed prices are based on the list prices of the Vendor and if deliveries are not made until four months after the completion of contract, deliveries shall be made on the basis of the valid list prices of the Vendor at the time of delivery (in each case minus an agreed percentage or fixed discount).
- (3) Due date arrangements with regard to the purchase prices to be paid shall be subject to the negotiations of the parties with respect to the individual purchase orders. Cheques shall only be accepted as payment from the date of redemption. If and insofar as no due date agreement has been made between the parties, the purchase price shall become due for payment as follows:
30 % of the total purchase price: 10 days after the order has been placed,
70 % of the total purchase price: 10 days before delivery of the goods.
- (4) If the Purchaser does not pay by the due date, then interest will be charged on the outstanding amounts at a rate of 9 (nine) percentage points above the base rate p. a. as from the due date; the possibility to claim higher interest and additional damages in cases of default shall remain unaffected.
- (5) The Purchaser shall only have a right to set off counterclaims or to withhold payments due to such claims insofar as the counterclaims are undisputed or have been established as legally valid.
- (6) The Vendor shall be entitled to make outstanding deliveries or services only against advance payment or security or to provide them if circumstances become known after conclusion of the contract, which are suitable to reduce the creditworthiness of Purchaser considerably and through which the payment of our outstanding claims by the Purchaser is endangered from the respective contractual relationship.
- (7) In the case of cancellation of a purchase order by the Purchaser the Vendor shall be entitled to claim a lump-sum compensation from the Purchaser as follows:
In the event of cancellation of an order after its confirmation an amount of 10 % of the invoice amount as well as in case of cancellation of an order after invoicing and/or after notification of readiness for shipment an amount of 20 % of the invoice amount.
The Purchaser shall be entitled to prove that no damages or only lower damages have occurred.

§ 4 Delivery, delay, impossibility

- (1) Deliveries shall be done in accordance with the delivery terms and conditions agreed upon in each particular case. If and insofar as no agreement has been made between the parties, the delivery shall be done free carrier (FCA).
- (2) If a deadline for delivery or performance is neither defined nor can be defined, the deadlines usual in the industry shall apply.
- (3) Notwithstanding their rights with respect to defaulting on the Purchaser's part, the Vendor shall be entitled to demand from the Purchaser an extension of the delivery and service deadlines or a postponement of delivery and completion deadlines by the period of time for which the Purchaser fails to meet their contractual obligations with respect to the Vendor, particularly the obligation to pay the sale price, and for which the Purchaser is responsible.
- (4) The Vendor shall not be liable for impossibility of delivery or for delays in delivery if these are caused by force majeure or other events that could not be foreseen

at the point in time the contract was concluded (e.g. operational disruptions of all kinds, difficulties in procuring material or energy, transport delays, strikes, lawful lockouts, shortage of labour, energy or raw materials, difficulties in obtaining the necessary regulatory approvals, official measures or missing, wrong or late delivery by suppliers), for which the Vendor is not responsible. If such events substantially complicate the delivery or service or make the delivery or service impossible to render, and the hindrance is not of only a temporary nature, the Vendor shall then be relieved from his obligation to deliver. Should there be obstacles of a temporary nature, delivery or performance deadlines may be extended or the delivery or performance dates postponed by the period of the delay plus a reasonable start-up period.

(5) If the Vendor should be in default with a delivery or service or if a delivery or service should become impossible to deliver or to render, the Vendor shall be liable according to § 9 of these General Terms and Conditions of Sale and Delivery if and insofar the Vendor is responsible for that.

(6) The Vendor shall be entitled to early delivery.

§ 5 Place of performance, shipping, packaging, transfer of risk

(1) Shipping and packaging shall be subject to the professional judgment of the Vendor.

(2) Unless otherwise agreed between the parties, the risk of the purchased and delivered object shall pass to the first transport person at the place of delivery.

§6 Retention of title

(1) Until full payment is made for all present and future claims of the Vendor against the Purchaser from an ongoing business relationship, the Vendor retains the ownership to the contractual objects sold and delivered.

(2) The contractual objects subject to retention of ownership may not be pledged or assigned as collateral to third parties until full payment of the secured claims is received. The Purchaser must notify the Vendor immediately in writing if and to the extent third parties have access to the goods belonging to Vendor.

(3) However, the Purchaser shall be entitled to resell and/or further process the contractual products under retention of ownership in the ordinary course of its business. In this case, the following provisions shall also apply:

a) The retention of title shall extend to all products resulting from the processing, mixing or combining of the contractual products of the Vendor at their full value, and the Vendor shall be considered the manufacturer. If third parties retain their title to products used in conjunction with the processing, mixing or combining of the delivered goods, the Vendor shall acquire co-ownership in proportion to the invoice value of the processed, mixed or combined goods. In all other cases, the same shall apply to the resulting product as to the goods delivered subject to retention of title.

b) The Purchaser assigns any claims against third parties arising from the resale of the goods or products, in total or in the amount of the possible co-ownership share, to the Vendor as a security pursuant to the aforementioned paragraph. The Vendor accepts this assignment.

c) In addition to the Vendor, the Purchaser shall also be authorised to collect the claim. The Vendor undertakes not to collect the debt as long as the Purchaser fulfils their payment obligations to the Vendor, do not fall into arrears, have not made any application to open insolvency proceedings, or there is no other fact preventing them from making their payments.

d) If the realisable value of the securities exceeds the claims of the Vendor by more than 20 %, the Vendor will release securities at the Vendor's option, upon request by the Purchaser.

§ 7 Material defects

(1) Variobend machines fulfill the relevant statutory product safety requirements as appropriate in the European Union, especially the following guidelines: Machinery Directive 2006/42/EC (Annex I), Electromagnetic Compatibility Directive 2004/108/EC, Low Voltage Directive 2006/95/EC, ATEX Directive 94/9/EC, Pressure Equipment Directive 97/23/EC, Simple Pressure Vessels Directive 87/404/EWG, Outdoor Noise Directive (2000/14/EC, Directive on Eco-design of Energy-Using Products 2005/32/EC.

(2) Apart from that, information of the Vendor on the subject of the delivery or service (e.g. weights, dimensions, utility values, load, tolerances and technical data) as well as representations of the same (e.g. drawings and pictures) are only approximate, unless the usability for the contractually agreed purpose requires an exact match. These are not guaranteed characteristics but rather descriptions or identifications of the delivery or service. Customary deviations or deviations as a result of legal regulations or representing technical improvements, as well as the replacement of components with equivalent parts, shall be permitted provided they do not impair the usability for the contractually intended purpose.

(3) The period of warranty is 12 months from the date of delivery.

(4) The contractual objects shall be accurately inspected immediately after delivery to the Purchaser or any third party appointed by the same. They shall be deemed to be approved if the Vendor has not received a written notification of defects pertaining to visible defects or other defects visible in the course of a prompt, thorough examination or incorrect, excessive or incomplete deliveries within 1 to 2 working days following delivery of the delivery object. In case of hidden defects, a written notice of defect shall be sent within 1 to 2 working days to the Vendor immediately after the defect has been discovered. At the request of the Vendor, the defective delivery item shall be returned to the Vendor freight paid.

(5) In case of material defects in the items supplied to the Purchaser, the Vendor shall be initially obliged and entitled to repair them or supply replacements according to their choice.

(6) In case of defective components from other manufacturers which the Vendor cannot eliminate for licensing or legal reasons, warranty claims against the manufacturers and suppliers will be made on behalf of the Purchaser or assigned to the Purchaser at the Vendor's discretion. Warranty claims against the Vendor for such defects are subject to other conditions and to these General Terms and Conditions of Sale and Delivery only if the court enforcement of the aforementioned claims against the manufacturer and supplier was unsuccessful or, for example due to insolvency, is futile. During the duration of the legal dispute, the statute of limitations of the warranty claims of the Purchaser against the Vendor is suspended.

(7) Warranty claims are excluded in cases of natural wear and tear and damage, after the transfer of risk from faulty or negligent handling, excessive strain, unsuitable equipment, defective construction work, unsuitable foundation or due to special external influences which are not assumed under the contract, as well as for not reproducible software defects. If the Purchaser or third parties make improper modifications or repair work, there are likewise no warranty claims for defects for these and the resulting consequences.

(8) Claims by the Purchaser arising out of expenses necessary for the purpose of supplementary performance, in particular transport, travel, labour and material costs are excluded if the expenses increase because the objects delivered by the Vendor are subsequently taken to another location than the Purchaser's premises, unless the transfer corresponds to the intended use.

(9) A delivery of used objects agreed in an individual case shall exclude all and any guarantee for material defects.

§ 8 Property rights

(1) The Vendor guarantees according to § 8 that the delivery item is free of industrial property rights and third-party copyrights. Each party will notify the other party in writing without delay if it is subjected to any claims of infringement of such rights.

(2) In the event that the delivery item supplied infringes any industrial property rights or third-party copyrights, the Vendor shall, at its own discretion and expense, modify or replace the delivery item in such a way that the third party rights are no longer violated, while the delivery item continues to meet the contractually agreed functions or procure the right of use for the customer by concluding a licence contract. If the Vendor is unable to achieve this within a reasonable time limit, the customer shall be entitled to withdraw from the contract or reduce the purchase price to an appropriate extent. Potential claims for damages of the customer are subject to the restrictions of § 9 of these Conditions of Sale and Delivery.

(3) In case of infringements due to products of other manufacturers delivered by the Vendor, the Vendor will, at its own discretion, assert its claims against the manufacturers and pre-suppliers for the account of the customer or assign them to the customer. In such cases, claims against the Vendor shall only arise in accordance with the provisions of this section if the legal enforcement of the aforementioned claims against the manufacturers and pre-suppliers was unsuccessful or if there is no prospect of success because of insolvency for example.

§ 9 Liability for compensation

(1) The Vendor shall have unlimited liability only in cases of intent and gross negligence, injury to life, body or health, and claims pursuant to ProdHaftG (German law on product liability).

(2) In all other cases, the liability for damages from the infringement of an essential contractual obligation shall be limited to the replacement of the foreseeable, typically occurring damage.

(3) The liability for the replacement of the foreseeable, typically occurring damage shall be limited to the amount of € 5,000,000.00 in each case of damage. This corresponds to the current cover sum of the product liability insurance/liability insurance.

(4) To the extent that the aforementioned liability is excluded, this shall also apply to the personal liability of the staff, employees, representatives, organs and agents of the Vendor.

§ 10 Final provisions

- (1) Place of fulfillment for all obligations of the contractual relationship is D-83483 Bischofswiesen, unless otherwise determined.
- (2) The place of jurisdiction for all and any disputes arising out of the business relations between the Vendor and the Purchaser shall be D-83483 Bischofswiesen or the head office of the Purchaser. For legal action against the Vendor, D-83483 Bischofswiesen shall be the sole place of jurisdiction. Mandatory statutory provisions on exclusive jurisdictions shall remain unaffected by this provision.
- (3) The relationships between the Vendor and the Purchaser are subject to the material law of the Federal Republic of Germany.
- (4) If one or more provisions of this contract should become wholly or partially invalid or if the contract contains a loophole, the validity of the remaining provisions shall not be affected thereby. The contracting parties agree in advance that an invalid clause or a clause which becomes invalid during the performance of contract shall then be replaced by a clause coming closest to the economic purpose of the invalid clause.