

General Terms and Conditions of Sale and Delivery of Verallia Deutschland AG



Verallia Deutschland AG
Oberlandstraße
D-88410 Bad Wurzach

I. Scope

- (1) These General Terms and Conditions of Sale and Delivery (hereinafter referred to as "GTC") shall apply to all contracts for the sale and/or delivery of movable goods between Verallia Deutschland AG (hereinafter referred to as "Supplier") and entrepreneurs, legal entities under public law or special funds under public law (hereinafter referred to as "Customer").
- (2) These General Terms and Conditions shall apply exclusively, even if the Supplier accepts orders and/or carries out deliveries without reservation in the knowledge of the Customer's terms and conditions. The Supplier shall not recognise any conflicting, deviating or supplementary terms and conditions of business of the Customer, unless the Supplier has expressly agreed to their validity in writing.
- (3) These General Terms and Conditions in their current version shall also apply as a framework agreement for future contracts for the sale and/or delivery of movable goods with the same Customer, without the Supplier having to refer to these General Terms and Conditions again in each individual case.
- (4) Individual agreements made with the Customer in individual cases (including collateral agreements, supplements and amendments) shall in any case take precedence over these GTC. Subject to proof to the contrary, a written contract or the written confirmation of the Supplier shall be decisive for the content of such agreements.
- (5) References to the validity of legal regulations only have a clarifying meaning. Even without such clarification, the legal provisions shall therefore apply, unless they are directly amended or expressly excluded in these GTC.

II. Offers, conclusion of contract

- (1) Offers submitted by the Supplier are always subject to change and non-binding, unless they are expressly marked as binding or they expressly contain a certain period of acceptance.
- (2) Orders shall be deemed to be a legally binding offer by the Customer to conclude a contract.
- (3) The acceptance of the Supplier can either be declared in writing, whereby the text form is sufficient (e.g. via order confirmation), or by delivery of the goods to the Customer. If orders are not accepted within 14 calendar days of receipt by the Supplier, they shall be deemed rejected. If the Supplier's declaration of acceptance deviates from the order, the declaration of acceptance shall be decisive for the content of the contract, unless the Customer objects within ten calendar days of receipt of the order by the Supplier.

III. Deliveries

- (1) Unless otherwise agreed, deliveries shall be ex works ("EXW Incoterms 2020"), with reference to the works or warehouse from which the Supplier delivers in each case.

- (2) The Supplier is free to choose the production site from which it delivers. It is also free to determine the place of dispatch in the case of delivery of stock goods.
- (3) The scope of the delivery is determined by the Supplier's order confirmation. If no such confirmation is available, the delivery note shall be deemed to be the order confirmation.
- (4) Samples, specimens and illustrations are only approximate. All information regarding weight, content, dimensions and the like are to be considered average values. Unless limits for the permissible deviations are expressly specified, deviations due to production and/or technical progress shall be deemed to be permitted within the scope of what is customary in the industry. Colour identity cannot be guaranteed.
- (5) Excess or short deliveries of up to 10% of the respective agreed delivery quantity are permissible. The quantity actually delivered shall be invoiced.
- (6) The Supplier is entitled to make partial deliveries if (i) the partial delivery is usable for the Customer within the scope of the contractual purpose, (ii) the delivery of the remaining goods is ensured and (iii) the Customer does not incur any significant additional expenditure as a result.

IV. Prices, terms of payment

- (1) The prices are net prices in the currency stated, plus value added tax at the statutory rate on the day of invoicing, plus customs duties and other charges. In the case of list prices or if no specific price has been agreed, the Supplier's price list in the version valid at the time of conclusion of the contract shall apply, unless a separate annual agreement regarding prices/quantity exists. The Supplier reserves the right to make reasonable changes to prices if, after acceptance of the order and before delivery, there are reductions or increases in material prices or reductions or increases in wage or energy or manufacturing costs. The Supplier shall provide evidence of such reductions or increases to the Customer at the latter's request.
- (2) Unless otherwise agreed in individual cases, the prices quoted for deliveries within the Federal Republic of Germany shall apply ex works ("EXW Incoterms 2020"). Unless otherwise agreed, the costs do not include insurance premiums or other additional costs. Any plastic interlayers supplied are reusable boards on loan and shall remain the property of our supplier. It is not possible to purchase these in good faith. These are to be kept ready for free collection by our supplier. The Supplier is free to send invoices by electronic means.
- (3) Unless otherwise agreed or otherwise stated on the invoice, payments are due within 14 calendar days of receipt of the invoice without deduction and shall be paid into one of our accounts. The invoice shall be deemed to have been received within three (3) days of dispatch, unless the Customer proves otherwise.
- (4) The Customer shall be automatically in default from the time the due date is exceeded, unless performance is not rendered due to circumstances for which it is not responsible. During the period of default, interest shall be charged on the purchase price at the legally applicable default interest rate, but at least nine percentage points above the base rate. Any discounts or other benefits granted by the Supplier shall be cancelled. The Supplier reserves the right to assert further claims for damages caused by the default as well as the lump sum payment for default. The Supplier also reserves the right to claim commercial maturity interest from the due date (§§ 352, 353 German Commercial Code (HGB)).
- (5) The crediting of payments made by the Customer shall be effected in the order of repayment determined by the Supplier if the payment made is not sufficient to settle all monetary debts of the Customer arising from the business relationship with the Supplier. Any performance provision for the Customer pursuant to § 366 para. 1 German Civil Code (BGB) shall be invalid in this respect.
- (6) The Customer shall only be entitled to set off or assert a right of retention if and to the extent that its counterclaim used for this purpose is either (i) undisputed or based on a title against which an appeal is not or no longer admissible, or (ii) in the case of procedural assertion, ready for decision at the time of the last oral hearing, or (iii) is in a reciprocal relationship with the main claim.
- (7) If it becomes apparent after conclusion of the contract (e.g. through an application for the opening of

insolvency proceedings) that the Supplier's claim to the purchase price is endangered by the Customer's lack of ability to pay, the Supplier shall be entitled to execute deliveries or services only against advance payment or provision of security and – if necessary, after setting a deadline – to withdraw from the contract (§ 321 BGB). In the case of contracts for the manufacture of single items (custom-made products), the Supplier may declare its withdrawal immediately; the statutory provisions on the dispensability of setting a deadline remain unaffected.

V. Delivery dates and periods, delays

- (1) Times, dates or deadlines for delivery (“delivery deadlines”) promised by the Supplier shall always be considered approximate only, unless a fixed delivery deadline has been expressly agreed or promised by the Supplier. Agreed or promised delivery deadlines shall be calculated from the date of order confirmation
- (2) The occurrence of the Supplier's default in delivery shall be determined in accordance with the statutory provisions. In any case, however, a written reminder from the Customer is required. In the case of promised, approximately valid delivery deadlines, the Customer can, via a written request issued two weeks after expiry of the delivery deadline, require the Supplier to deliver within a reasonable grace period. Upon expiry of the reasonable grace period, the Supplier shall be in default.
- (3) If the Supplier is in default of delivery and has allowed a reasonable grace period – set by the Customer in writing – to expire without delivery, the Customer shall be entitled to withdraw from the contract to the extent that delivery has not yet taken place. Any further claims for damages due to non-fulfilment or delay can only be asserted by the Customer in accordance with Section IX (Liability for damages).
- (4) The Supplier shall not be liable for the impossibility of delivery or for delays in delivery if these are due to force majeure or other events that were not foreseeable at the time of the conclusion of the contract (e.g. operational disruptions of all kinds, interventions by public authorities, armed conflicts, natural disasters, delays in the delivery of energy and raw materials, labour disputes, in particular strikes and lock-outs) and for which the Supplier is not responsible. Such an event shall also be deemed to be an incorrect or untimely delivery by one of the Supplier's upstream suppliers if the Supplier is not responsible for the error and had concluded a congruent hedging transaction with the Customer at the time the contract was concluded. If such events make it considerably more difficult or impossible for the Supplier to deliver or perform and the hindrance is not only of a temporary nature, the Supplier shall be entitled to withdraw from the contract. In the event of hindrances of a temporary duration, the delivery or performance deadlines shall be extended or the delivery or performance deadlines postponed by the period of the hindrance plus a reasonable start-up period. The Supplier shall inform the Customer of such events without delay and at the same time notify the Customer of the expected new delivery deadline.
- (5) The Supplier may – without prejudice to its rights arising due to default on the part of the Customer – demand an extension of delivery deadlines from the Customer for the period during which the Customer fails to fulfil its contractual obligations, in particular if it has not made agreed advance payments or has not complied with other advance performance and cooperation obligations.
- (6) Partial deliveries from call-off orders shall be delivered four weeks after the call-off is issued by the Customer. If no call-off is issued within a reasonable period, the Supplier may, after prior notice, choose performance or withdraw from the contract. Any claims for damages asserted by the Supplier shall remain unaffected.
- (7) Goods which are provided or delivered on time shall be accepted by the Customer without delay. In addition, the Customer shall fulfil all the necessary prerequisites on its part in good time for the timely completion of the order. If, at the request of the Customer, finished goods remain at its disposal ready for delivery, the invoice can be issued immediately, and payment can be demanded. The goods shall then be stored at the expense and risk of the Customer. The same applies in the event of default of acceptance by the Customer.

VI. Packaging and shipping

- (1) In the absence of other agreements, the Supplier shall choose the type of packaging and shipping as well as the shipping route and transport company at its dutiful discretion.
- (2) Conveyor aids (e.g. flat pallets) made available on loan by the Supplier must be returned free of charge within three months in a usable condition, otherwise they will be invoiced to the Customer at the replacement price, unless the Customer can prove that it is not at fault for the lack of return.

VII. Reservation of title

- (1) The delivered Goods shall remain the property of the Supplier (“Reserved Goods”) until full payment of all claims against the Customer, including future claims against the Customer arising from the business relationship with the Supplier. The Customer shall be entitled to resell the Reserved Goods in the ordinary course of business, unless the Customer's claim resulting from the resale has already been assigned to others; the right of resale shall also cease to exist in the event of default in payment or lack of ability to pay on the part of the Customer. In the event of resale on credit, the Customer is obliged to safeguard the rights of the Supplier. It is not permitted to pledge the goods or assign them as security without the express consent of the Supplier.
- (2) The Customer hereby assigns to the Supplier by way of security all claims against third parties arising from the resale of the Reserved Goods to the amount of the Supplier's claims – in the case of co-ownership of the Reserved Goods by the Supplier in proportion to the Supplier's co-ownership share – without the need for a separate declaration of assignment in individual cases; the Supplier hereby accepts the assignment. Irrespective of the assignment and the right of collection of the Supplier, the Customer shall be entitled to collect as long as it fulfils its obligations towards the Supplier, in particular its payment obligations, and there is no impairment to its ability to perform. At the Supplier's request, the Customer shall, at any time, provide the information required for collection regarding the assigned claims and shall inform the debtors of the assignment. In case of default of payment or lack of performance by the Customer, the Supplier is entitled to inform the third-party debtors of the assignment of claims and to collect the claims itself.
- (3) If the Supplier withdraws from the contract in the event of conduct that is in breach of contract, in particular default of payment by the Customer, the Supplier shall be entitled to demand the return of the Reserved Goods on the basis of the reservation of title.
- (4) In the case of combination (§ 947 BGB) and in the case of mixing or blending (§ 948 BGB) of the Reserved Goods with other items not owned by the Supplier, the Supplier shall acquire co-ownership of the newly created item in the ratio of the value (gross invoice value) of the Reserved Goods to the value of the other combined, mixed or blended items at the time of combination or mixing or blending; if the Reserved Goods are to be regarded as the main item (§ 947 para. (2) BGB), the Supplier shall acquire sole ownership. If one of the other items is to be regarded as the main item, the Customer, insofar as it owns the main item, hereby assigns to the Supplier the proportionate co-ownership of the uniform item in the aforementioned ratio. The Supplier hereby accepts this transfer. The sole ownership or co-ownership created in accordance with the above-mentioned regulations shall be safeguarded by the Customer for the Supplier free of charge.
- (5) In the event of seizure of the Reserved Goods by third parties or other access to the Reserved Goods, the Customer shall inform the Supplier immediately in writing so that the Supplier can assert its ownership rights. Insofar as the third party is not able to reimburse the Supplier for the judicial or extrajudicial costs incurred by the Supplier in this connection, the Customer shall be liable to the Supplier for such costs.
- (6) The Supplier undertakes to release the securities to which it is entitled in accordance with the above provisions at its discretion at the request of the Customer, to the extent that the value exceeds the claims to be secured by more than 10%.
- (7) The Customer is obliged to store the Reserved Goods properly and separately from its other goods and to insure them at its own expense against theft, breakage, fire, water and other damage. The insurance

claims shall be deemed assigned to the Supplier in the amount of the value of the Reserved Goods.

- (8) If, in the case of deliveries abroad, mandatory legal provisions of the respective country do not stipulate retention of title within the meaning of this Section VII, but do stipulate other, comparable rights to secure the Supplier's invoiced accounts receivable, the Supplier hereby reserves the right to assert such rights. The Customer shall cooperate in the measures to which the Supplier is entitled in order to protect its right of ownership or any other right to the Reserved Goods, which would otherwise replace the Supplier's right of ownership.

VIII. Warranty

- (1) The goods shall be deemed to be in conformity with the contract if they do not deviate or only deviate insignificantly from the agreed quality at the time of the transfer of risk; conformity with the contract and freedom from defects of the goods shall be measured exclusively in accordance with the express agreements on the quality and quantity of the goods. Liability for a specific purpose or a specific suitability shall only be assumed if this has been agreed in writing; otherwise the risk of suitability and use shall be borne exclusively by the Customer. The delivery of a certain quantity of bottles and jars does not constitute an aggregate of assets.
- (2) Unless otherwise agreed in writing, the Supplier does not guarantee that the goods delivered by it comply with any legal requirements other than those applicable in the Federal Republic of Germany.
- (3) The details of the agreed quality and any expressly agreed purpose of use do not constitute a guarantee; the assumption of a guarantee requires a written agreement between the Customer and the Supplier.
- (4) Warranty claims shall expire 12 months after delivery of the goods. In the case of claims for damages by the Customer arising from injury to life, body or health, from intentional or grossly negligent breaches of duty by the Supplier or its vicarious agents, from fraudulent concealment of a defect, from the assumption of a guarantee for the quality of a service or for a procurement risk or from claims under the German Product Liability Act (Produkthaftungsgesetz), the statutory limitation periods shall apply.
- (5) The Customer must inspect the delivered goods immediately upon receipt and notify the Supplier of any defects without delay. If the Customer fails to notify the Supplier of defects without delay, the warranty obligation and other liability for the respective defects is excluded, unless the Supplier has fraudulently concealed the defects.
- (6) Insofar as the Customer is entitled to assert claims against the Supplier due to the defectiveness of goods, the Supplier shall, at its reasonable discretion, provide subsequent performance by means of replacement delivery or rectification. The Customer shall grant the Supplier a reasonable opportunity and grace period for the subsequent performance. The right of the Supplier to refuse subsequent performance under the statutory conditions remains unaffected. Replaced parts shall become the property of the Supplier. If the Supplier allows a reasonable grace period set by the Customer to elapse without remedying the defect, or if the setting of such a grace period by the Customer is optional in accordance with the statutory provisions, or if the remedy or replacement delivery fails, the Customer may, at its discretion, withdraw from the contract or demand a reduction (lowering of the remuneration). In the case of an insignificant defect, however, there is no right to withdraw from the contract.
- (7) Claims for damages and claims for reimbursement of futile expenses against the Supplier due to the defectiveness of the Customer's item can only be asserted in accordance with Section IX (Liability for damages).
- (8) Goods returns require mutual agreement. The Customer is liable for loss and damage during return transport.
- (9) The above provisions shall apply mutatis mutandis to defects which have arisen as a result of advice or within the framework of other contractual ancillary obligations.

IX. Liability for damages

- (1) Unless otherwise stipulated in these GTC, including the following provisions, the Supplier shall be liable in accordance with the statutory provisions in the event of a breach of contractual and non-contractual obligations.
- (2) The Supplier shall be liable for damages – regardless of the legal grounds – without limitation with regard to compensation for damages and the reimbursement of futile expenses which are based on an intentional or grossly negligent breach of duty by the Supplier or one of its legal representatives or vicarious agents.
- (3) In the event of a simple or slightly negligent breach of duty by the Supplier or one of its legal representatives or vicarious agents, the Supplier shall only be held to a milder standard of liability in accordance with the statutory provisions (e.g. for care in its own affairs)
- (3a) – however, without limitation – for damages based thereon and the reimbursement of futile expenses resulting from injury to life, body or health,
- (3b) for damages/replacement of futile expenses resulting from the not inconsiderable breach of an essential contractual obligation (an obligation whose fulfilment makes the proper execution of the contract possible in the first place and on whose observance the Customer regularly relies and may rely); in this case, however, the liability of the Supplier is limited in amount to the compensation of the typically occurring damage foreseeable at the time of conclusion of the contract.
- (4) The limitations of liability resulting from the above paragraph (3) lit. b) shall not apply if the Supplier has fraudulently concealed a defect, or has assumed a guarantee for the quality of the goods or a procurement risk. Any mandatory statutory liability of the Supplier, in particular for claims of the Customer under the Product Liability Act, shall remain unaffected.
- (5) The Customer must notify the Supplier immediately in writing of any damage for which the Supplier is liable.
- (6) If the Customer owes contractual penalties or lump-sum damages to third parties in connection with goods delivered by the Supplier, the Customer cannot assert corresponding claims against the Supplier, unless – subject to all further conditions – this has been expressly agreed with the Supplier in writing and the Customer has informed the Supplier of this risk in writing prior to the conclusion of the contract between the Customer and the Supplier.
- (7) The exclusion or limitation of the Supplier's liability in accordance with the above provisions shall also apply in favour of its legal representatives, organs, employees and vicarious agents.
- (8) Due to a breach of duty which does not consist of a defect, the Customer may only withdraw or terminate the contract if the Supplier is responsible for the breach of duty. A free right of termination on the part of the Customer (in particular pursuant to §§ 650, 648 BGB) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.

X. Moulds, tools, sales documents

- (1) The costs for the production, procurement and modification of special moulds and tools shall be borne by the Customer. The ownership of such moulds and tools and all associated copyrights shall remain with the Supplier even after payment. This does not apply if the Customer provides its own production moulds or tools for the execution of its order without the Supplier having made any substantial changes to them.
- (2) The Supplier undertakes to use the Customer's production moulds and tools only for the execution of the Customer's orders, unless the Supplier has made substantial changes to them.
- (3) The Supplier undertakes to keep the production moulds and tools paid for by the Customer ready for use until they are rendered unusable due to natural wear and tear, and for a maximum period of 2 years after the last delivery.

XI. Violation of industrial property rights

The Customer shall be liable for ensuring that the execution of the order placed by it on the basis of its own specifications, wishes or templates for shapes, colours, sizes and weights does not infringe any copyrights, industrial property rights or other rights of third parties. If claims are asserted against the Supplier for infringement of the aforementioned rights or claims under competition law, the Customer shall indemnify the Supplier against all obligations and costs arising therefrom and shall also provide appropriate advance payments and securities at the Supplier's request.

XII. Data acquisition

The Supplier points out that it stores personal data exclusively in compliance with the statutory provisions and in connection with business transactions, with which the Customer declares its agreement.

XIII. Final provisions

- (1) The place of performance for deliveries is the warehouse or the place from which the Supplier delivers. The place of performance for the Customer's payment obligation is the registered office of the Supplier in Bad Wurzach.
- (2) The exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly from the business relationship between the Supplier and the Customer is the registered office of the Supplier in Bad Wurzach. However, the Supplier is also entitled to bring an action against the Customer at the latter's registered office or at the place of performance. Mandatory statutory provisions concerning exclusive places of jurisdiction remain unaffected.
- (3) The law of the Federal Republic of Germany applies exclusively, with the exception of the conflict of laws provisions. The application of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods (CISG), is expressly excluded.
- (4) Should provisions of these GTC be or become invalid or ineffective in whole or in part, the validity of the remaining provisions shall not be affected. Insofar as provisions have not become part of the contract or are ineffective, they shall be replaced by effective provisions that come as close as possible to the economically intended purpose.

XIV. Confirmation of receipt

If a delivery is exempt from VAT pursuant to §§ 4 No. 1 lit. b) in conjunction with § 6 a of the German Value Added Tax Act (UStG), the Customer is obliged to sign a confirmation of receipt and return it to the Supplier within 30 days of the handover of the goods by the Supplier or a third party commissioned by the Supplier. If the Customer does not fulfil its obligation, the VAT shall be charged retrospectively. Ownership of the object of purchase shall remain reserved until receipt of the confirmation of receipt or until payment of the subsequently invoiced VAT.