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Viebahn GmbH Order and Delivery Conditions for contracts and merchants

I. GENERAL TERMS

- Our terms of order and delivery apply to all agreements, delivery contracts and offers, and become effective through the placing of orders or the acceptance of delivery. Differing terms of the customer or the supplier do not apply, even if we do not expressly object thereto; such terms are only applicable in individual instances when directly and specifically accepted by us in writing.
- The terms of order and delivery apply to all present and future business relationships.
- Additional agreements, informal understandings and subsequent amendments, whether verbal or by telephone, do not take effect unless they are expressly confirmed by us in writing.
- Orders issued by us are deemed to be accepted unless they are expressly objected to in writing within 10 days.
- Any provision of the agreement that is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of the agreement or affecting the validity or enforceability of all remaining provisions. In such case the parties to the agreement are mutually obligated to agree in good faith to a replacement provision that captures the spirit and achieves the economic purpose of the agreement.

II. OFFERS

- Specifications quoted in prospectuses, price lists, catalogues, circulars and other pamphlets or media, or in documents that are part of the offer, as well as illustrations, descriptions, technical data and descriptions of capacity are not binding.
- We do not accept any liability for the accuracy of technical data and other specifications in the manufacturing pamphlets or drawings. We reserve the right to technical modifications. Certain variances must be accepted by the customer to the extent they are reasonable. Our offers are subject to change without notice and not binding.

III. WITHDRAWAL FROM AGREEMENT

The parties to the agreement will attempt in good faith to adequately modify the same in such cases where unforeseen events significantly alter the economic significance of the agreement, alter the nature of the service or otherwise influence the ability of Viebahn GmbH to perform under the terms of the agreement. The same applies in cases of subsequent impossibility of performance. Should this not be economically justifiable, Viebahn GmbH reserves the right to withdraw from the agreement completely or in part.

IV. DELIVERY AND PERFORMANCE TIMES, TAKING DELIVERY

- All deliveries shall be approximate and delivery guarantees are enforceable only if expressly offered in writing. In case of a written guarantee the ordering party must grant a reasonable extension unless delay of delivery is caused by force majeure. Partial deliveries shall be permitted upon expiration of the delivery time extension. After unavailing expiration the ordering party might withdraw from quantities and performances not being announced ready for dispatch by the end of the delivery time extension. Additional remedies, especially claims for damages by the ordering party, are excluded.
- Provided it has been expressly agreed upon in writing, the time of delivery begins with the day of dispatch of the order confirmation and is assumed to be complied with when the goods have left the business premises or the warehouse prior to expiration of the term of delivery or at such time readiness for shipment of the goods is announced prior to expiration of the delivery term. In the event of premature delivery the actual time of delivery governs over the originally agreed upon delivery term.
- The delivery obligation of Viebahn GmbH shall be subject to oneself obtaining correct and timely delivery.
- The delivery time shall be extended within reason in the event we are prevented from fulfilling our delivery obligation by reason of force majeure. Force majeure shall include but not be limited to unexpectedly extraordinary circumstances or acts of God we could not avert by means of reasonable care regardless whether they occur in the business premises or the warehouse of the supplier or the sub-supplier. Extraordinary circumstances specifically include manufacturing breakdown, official action, delay in delivery of important raw- and building material, strike, lock out, lack of personnel, lack of or loss of important means of transportation. The term of delivery shall be reasonably extended – also within a delivery delay – unless both delivery and performance are impossible. If the delivery time is extended under the aforementioned circumstances or the supplier is released from his delivery obligation, any and all claims of compensation derived from these circumstances and rights of withdrawal of Viebahn GmbH will be dropped.
- The same legal consequences apply to the customer's purchase obligation under the aforementioned circumstances. Viebahn GmbH shall only be allowed to assert the legal consequences herein if they directly inform the client thereof. This applies equally when the client asserts the above mentioned circumstances.
- If interference with the delivery time results from alterations of the contract, the delivery time shall be extended within reason, unless something else is agreed upon.
- Unless something to the contrary is agreed upon the inspection of the goods shall take place in the business premises or the warehouse of Viebahn GmbH or their sub-supplier.

V. PRICES

- Prices and refunds stated in order confirmations are binding as long as the costs underlying the price calculation, especially the wages and the cost of materials, have not changed between the execution of the contract and the delivery. Viebahn GmbH reserves the right to adjust their pricing in the event such costs do increase. The ordering party shall have the right to withdraw from the contract by written declaration to Viebahn GmbH within two weeks of receiving information of the price for those quantities not yet received, if the underlying contract is based on a long-term relationship of debenture.
- Absent special agreements in this regard, prices and refunds stated in the order confirmation apply ex works or warehouse of Viebahn GmbH or their sub-deliverers and all additional costs such as for packing, freight, duties and transport insurance shall be the responsibility of the customer.
- The statutory sales tax is deemed not to be included in the quoted prices and refunds, unless it is separately stated elsewhere.

VI. TERMS OF PAYMENT

- Unless other provisions are agreed upon in writing, all payments shall be made in cash without any discount (net terms only) within 30 days after date of invoice.
- The customer shall only be entitled to set-off, right of retention or discount of the sales price, if counter claims are legally established or specifically accepted by Viebahn GmbH. This also applies in the event defect notices or other counter claims are asserted.
- In case of late payment, the customer shall pay interest of 8 % (eight percent) over the base interest rate. Viebahn GmbH reserves the right to enforce additional claims for damages.
- Viebahn GmbH shall not be obligated to execute customer orders when the customer is in default of payment. Special notice is not required of Viebahn GmbH.

- Promissory notes and cheques are only acceptable as conditional payment. In the event cheques are accepted, a credit to the customer's account is applied subject to deposit of the cheque amount on the date on which Viebahn GmbH can freely access the equivalent on the customer's bank account. If promissory notes are accepted by Viebahn GmbH the customer shall bear the responsibility for expenses, costs and the risk of timely presentation and protests.

VII. PASSING OF RISK, DISPATCH, FREIGHT

- The risk of accidental loss or accidental deterioration of the goods transfers to the forwarding agent, the carrier or any person or institution responsible for the freight forwarding. The risk transfers to the customer at the moment the goods are forwarded and delivered, but no later than the time at which the goods leave our warehouse or business premises or those of our sub-deliverer. This also applies when the delivery is executed in parts or when we agreed to provide other services together in conjunction with the delivery. Per the customer's expressly request, Viebahn GmbH will insure the consignment at the expense of the client against damages caused by theft, damaging, transport, fire and water as well as other insurable risks.
- Delivery shall be deemed effected in the event the customer inadmissibly delays taking delivery of the goods.
- If dispatch of the consignment delays resulting from action by the customer, particularly in the event the customer collects the goods himself, the risk transfers to that customer on the day of dispatch.
- Partial delivery by Viebahn GmbH is permitted.

VIII. RETENTION OF TITLE

- Viebahn GmbH retains title to the delivered goods until the customer pays all Viebahn GmbH claims in full, even if the full sales price for a specific claim has been paid.
- The customer is authorized to use the goods for which title has not yet transferred to the customer in the normal course of business. Notwithstanding, the customer assigns all claims resulting from resale of the goods or any other cause in law to Viebahn GmbH as security. Viebahn GmbH accepts the assignment. The customer has revocable authorization to collect these claims for invoice of the Viebahn GmbH. Viebahn GmbH reserves the right to collect such claims as well. The customer is not authorized to assign these claims, unless the assignee agrees in turn to provide valuable consideration in the full amount of that claim.
- Outside the course of normal business, the customer is neither authorized to assign to a third party those goods for which title has not been transferred yet, nor shall the customer otherwise dispose of or encumber the goods. The customer shall immediately notify Viebahn GmbH in the event a judgment is being enforced against the customer, garnishments or attachments against the customer have been ordered, or insolvency procedures against the customer have been commenced.
- The customer shall notify Viebahn GmbH without delay of any damages to or destruction of the goods, as well as any change of ownership of the goods or change of business address.
- When the customer acts in violation of the agreement, specifically in case of default of payment or violation of any aforementioned obligation, Viebahn GmbH, without having to give notice, is entitled to immediately withdraw from the agreement and shall have the right to demand the immediate return of those goods for which title had not been transferred to the customer. Viebahn GmbH reserves the right to avail itself of additional remedies. The customer does not have the right of retention in such a case.

IX. WARRANTIES / LIABILITY / NOTICE OF DEFECTS

- Unless anything to the contrary is established by these order and delivery conditions, the warranties provided by Viebahn GmbH are based on generally applicable legal provisions.
- Technical advice to the customer as well as suggestions and instructions regarding the suitability, processing and application of the delivered products shall be provided to the best of knowledge and belief, but this does not relieve the ordering party from its duty to inspect and test the goods, especially in regard to factors the influence or consequences of which cannot be overseen by Viebahn GmbH.
- The warranty obligation of Viebahn GmbH is primarily limited to its choice of remedying a defect or making a replacement delivery. If a replacement delivery fails, the customer shall have the choice of demanding the reduction of the payment or cancellation of the contract. The customer shall not be entitled to cancellation of the agreement in case of minimal contract violations, especially in regard to minor defects.
- The customer shall immediately inspect the delivered goods for visible defects with regard to their composition and application. If the customer can be reasonably expected to do so he shall conduct a trial run. Otherwise the goods shall be regarded as free of defects and approved. The customer shall notify Viebahn GmbH in writing within one week of receipt of delivery of any defects discovered by such a trial run. Otherwise enforcement of a warranty claim shall be excluded. Timely dispatch of the notification shall satisfy the notice requirement. The customer shall bear the burden of proof for all claims, especially for the defect itself, the time of discovery of the defect and the timeliness of defect notifications.
- The customer waives his right to compensatory damages if he opts for the withdrawal from the agreement as a result of a failed replacement delivery. The defective goods remain with the customer if he chooses compensatory damages as the remedy for a failed replacement delivery. Any claim for compensatory damages shall be limited to the difference between the agreed upon price and the value of the defective goods. This shall not apply in the event a defect was maliciously caused by Viebahn GmbH.
- No implied or statutory warranties of merchantability or fitness for particular purpose shall apply.
- Warranties are in effect for one year from the time of dispatch of the goods. This does not apply when the customer fails to notify Viebahn GmbH of a defect in a timely manner (subparagraph 4).
- Viebahn GmbH shall not be liable for ordinarily negligent violations of insignificant contractual obligations including those of their legal representatives or agents. This does not apply to a customer's claims resulting from product liability or damages to life and limb attributable to Viebahn GmbH.

X. PLACE OF PERFORMANCE / COURT OF JURISDICTION/GOVERNING LAW

- Place of performance for all obligations under the agreement shall be the corporate domicile of Viebahn GmbH.
- Court of jurisdiction for all disputes arising from the agreement shall be the corporate domicile of Viebahn GmbH. In the alternative, Viebahn GmbH may opt for court of jurisdiction to be the corporate domicile of the customer.
- This agreement shall be governed by, and interpreted and construed in accordance with the laws of the Federal Republic of Germany. The official language of the agreement shall be German. UN-commercial law, the uniform laws on international purchase of movable goods, as well as on international commercial transactions for movable goods do not apply.

XI. FINAL CLAUSE

If any provision of the agreement is inoperative or unenforceable in part or full, the parties agree to establish a replacement provision that satisfies the spirit or purpose of the partially or completely inoperative or unenforceable provision. A partial inoperativeness or unenforceability shall not invalidate any of the other terms of the agreement and the agreement shall continue in force.