

Application of the Terms & Conditions of Sales and Delivery.

The following Terms & Conditions of Sales and Delivery of RÄDER-VOGEL, Räder- und Rollenfabrik GmbH & Co. KG ("Vendor") apply to all contracts for the delivery of goods to our contractual business partner of the vendor (hereinafter referred to as the "buyer"). They shall also apply to all future deliveries, services or offers to the client, even if they are not explicitly agreed anew. An express agreement shall be required in written form for variations from these Terms & Conditions of Sales and Delivery. The Buyer's own purchase terms or other general terms and conditions of business will not be accepted.

Intellectual property of the parties or third parties.

The Vendor reserves proprietary rights and copyrights in samples, cost estimates, offers, drawings and similar information of a tangible or intangible nature, including that in electronic form; these may not be made available to third parties. Proposal drawings and other documents must be returned to the Vendor on request. This applies also in the event that the order is not placed with the Vendor. If the Vendor is to manufacture goods or parts thereof according to the Buyer's drawings, models, samples, etc., the Buyer warrants that, before the order was placed, the Buyer carefully inquired into whether third-party property rights might be affected thereby and was unable to find any such affected property rights. The Buyer further warrants that such third-party property rights are not infringed by the manufacture as ordered. The Vendor is under no obligation vis-à-vis the Buyer to determine before manufacture whether third-party property rights are infringed. If, owing to a manufacture according to the Buyer's drawings, models, samples, etc., the Vendor should be held liable by third parties for infringement of property rights which vest in them, the Buyer agrees to promptly indemnify and hold harmless the Vendor from such claims.

Quotations; product descriptions.

Offers of the vendor are subject to change unless they are specifically marked as binding or contain a specific deadline for acceptance. Illustrations, drawings, dimensions, etc. in catalogues, brochures, price lists and other printed matters are non-binding. The right is reserved to make changes from the product descriptions in design, production or details, in a manner consistent with the state of the art, provided that the technical requirements are complied with and provided that usability for the contractually intended purpose does not require exact conformity. Stated load capacities are valid for a speed of 4 km/h on smooth, level and clean floors, without holes, grooves, thresholds, rails, etc., and at a normal temperature (approx. 20 degrees Celsius). In no case do product descriptions signify a warranty of the presence of specific characteristics, A warranty is deemed assumed only if it is expressly referred to as such in writing. No liability exists for printing errors in catalogues, brochures, price lists or other printed matters.

Delivery and passing of risk, force majeure and impediments to performance subject to Vendor's own supply.

The products are delivered ex works Hamburg (Incoterms 2020). If it is agreed in a particular case that the Vendor must take care of shipping, it will do so at the Buyer's risk and by a means of transport chosen by the Vendor at its reasonable discretion. Delivery times are provided in the agreements between the contracting Parties. Their observance by the Vendor is conditional upon clarification of all commercial and technical issues between the Parties along with the Buyer's satisfaction of all obligations to which it is subject to, such as, for example, production of all required official certificates or permits or the making of any agreed down payment. The delivery period will be prolonged as appropriate if this is not the case. This provision does not apply if the Vendor is responsible for the delay. Agreed delivery times begin on the date on which the order is confirmed.

Deadlines and dates for deliveries and services promised by the vendor are always only approximate, unless a fixed deadline or date has been expressly promised or agreed. Instances of force majeure or other events which are beyond the Vendor's control and which make delivery or performance substantially more difficult, or even impossible, for the Vendor – such as operational breakdowns, transport delays, strikes, lawful lockouts, pandemics and epidemics or official measures – entitle the Vendor to fully or partially rescind that portion of the contract that remains unperformed. Impediments of the temporary nature entitle it only to defer its promised performance for the duration of the hindrance, including a reasonable start-up time. This declaration, provided that the Vendor has not already performed – in part – is part of the contract. The Vendor reserves the right to make performance subject to its own timely receipt of the correct supplies. This applies also in cases of proper and timely delivery by a supplier of intermediate products.

Price, payment, cost components for moulds and models, counter-claims.

Unless otherwise provided, all prices are EXW factory/Vendor in Hamburg (Incoterms 2020) and do not include packing costs. In the event of significant changes in order-related cost factors (e.g. primary materials, wages, energy) the Vendor has the right to increase the agreed prices accordingly and at its reasonable discretion. Written notice must be given of the price increases. If the increases exceed 10% of the originally agreed price, the Buyer has the right to rescind the order without notice for cause. This right must be exercised against the Vendor within two weeks from receipt of notification of the price increase. The Vendor's invoices are payable in accordance with the agreed terms, with no deductions, postage-paid and without charge. Bills of exchange and cheques are accepted only by prior arrangement, in which case payment is deemed to be made only upon their redemption.

If the Buyer defaults in payment of an account, all accounts payable by the Buyer, including those from other contracts, become due and payable immediately. If the Vendor is obliged to perform in advance, it may refuse such performance if it becomes apparent, once the contract is entered into, that its claim to consideration is jeopardised by the Buyer's inability to pay. The right to refuse performance no longer applies if the consideration is received or security is provided for it. The Vendor is entitled to claim default interest in the amount of nine percentage points above the base interest rate, along with a lump sum of EUR 40, from the beginning of the default. That notwithstanding, the Vendor is entitled to demand compensation for a verifiably greater loss resulting from the default.

Cost components for moulds and models must be paid before work is taken up or completed. These components as a rule amount to approximately one third of the actual costs. If no order based on such moulds or models is fulfilled or reasons for which the Vendor is not responsible, the full costs thereof are due and payable in arrears. Moulds and models remain the property of the Vendor. The Buyer has the right to withhold payments, or to set off counter-claims against them, only if the Buyer's counter-claims are not disputed or have become final and absolute. This does not apply to counter-claims of the Buyer which directly seek rectification or reversal of a transaction – owing to a defect that the Vendor has not corrected, or is unable to correct, by means of remedial performance – and which are based on the same contractual relationship as the Vendor's claim to payment.

Special rules are applicable for call-off orders and custom-made products. In the case of call-off orders and custom manufactures the entire order quantity shall be made at once. Unless otherwise agreed, alteration requests by the Buyer can therefore no longer be considered once the order has been placed. For custom manufactures, the Vendor reserves the right to deliver short of, or in excess of, the ordered quantity by up to 10%. The following payment terms apply to custom manufactures: ½ upon notification of completion and invoicing.

Retention of ownership.

The Vendor retains ownership of the delivered products until all of its accounts receivable arising from the business relationship with the Buyer are paid in full. Transformation or processing of reserved goods by the Buyer is always performed on behalf of the Vendor, with no resulting obligation to the Vendor. Ownership of the new items in their particular state of transformation or processing vests in the Vendor. If the Vendor's reserved goods are transformed, processed, intermixed, mingled or combined with other products that do not belong to it, then co-ownership of the new item vests in the Vendor in proportion to the ratio between the invoice price of the reserved goods and the invoice price of the other products.

The Buyer may sell in the normal course of business the reserved goods of which the Vendor has sole or joint ownership; the Buyer is barred from pleading, chattel mortgaging, and assigning for security. The Buyer hereby assigns to the Vendor in advance all claims accruing to it from the resale of the reserved goods or of the products created through transformation, processing, intermixing, mingling or combination. This applies also if the products are sold for the total price with other products that do not belong to the Vendor. If a third party has by law acquired ownership or joint ownership rights in the product as a result of transformation, processing, intermixing, mingling or combination, then the Buyer likewise hereby and in advance assigns to the Vendor the claims accruing to it against the third party. Assignments for the purpose of this paragraph are made only up to the amount of the invoice price or the objective conditions are present under which it is the Buyer's duty to file an insolvency application.

The Buyer agrees to keep the reserved goods insured against the usual risks. It assigns the Vendor hereby and in advance its compensation claims against its insurer for loss of or damage to the reserved goods.

The Vendor hereby accepts the Buyer's assignments provided in this clause. The Vendor agrees to release at its discretion, at the Buyer's request, the security interests to which it is entitled under the preceding provisions to the extent that their value exceeds the claims to be secured by more than 10%. If the Buyer's assistance is needed to make the reservation of ownership effective, as, for example, in the case of registrations that are required by law in the Buyer's country, the Buyer must act accordingly. If the Buyer is in default of a payment, the Vendor may prohibit the Buyer from disposing of the reserved goods in full or, at the Vendor's discretion, in part, for example by permitting only their sale or further processing. If the Buyer is in default of a payment, the Vendor may prohibit the Buyer from disposing of the reserved goods in full or, at the Vendor's discretion, in part, for example by permitting only their sale or further processing.

If the objective conditions are present under which the Buyer is subject to the duty to file an insolvency application, the Buyer must without need of a demand to that effect, refrain from disposing of the reserved goods in any manner whatsoever. The Buyer is obliged to inform the Vendor promptly of its inventory of reserved goods. In this case the Vendor is further entitled to rescind the contract and to claim the return of the reserved goods. If the reserved goods have been transformed, processed, intermixed, mingled or combined with other products, the Vendor is entitled to demand their surrender to a trustee; the Buyer is obliged to disclose all co-owners of the reserved goods along with their names or firm names, addresses, and co-ownership shares. The same applies mutatis mutandis to claims that have been assigned to the Vendor in accordance with the preceding paragraphs; in addition, the Buyer must on its own provide the Vendor with the names and addresses of all debtors along with copies of the documents the claims against them.

Warranty/Liability for defects.

All claims by the Buyer arising from defects become time-barred within twelve months as calculated from the passing of the risks. All liability are excluded in the case of used equipment. The above shortened limitation period and the exclusion of liability for used items do not apply to claims for damages of any kind according to the legal regulations. The statutory warranty period shall also apply to claims for damages arising from the fact that the vendor is in default with a rectification of defects requested by the buyer and owed by the vendor. The provisions concerning an entrepreneur's rights of recourse in respect of purchased consumer goods (Sections 478 445a, 444b BGB – German Civil Code) remain unaffected thereby. If the Buyer is a merchant within the meaning of the HGB (German Commercial Code), it is subject to a duty to inspect and to report defects in accordance with Section 377 HGB. A notice of a defect is deemed "prompt" if it is made eight days after the date of reference according to the law.

No warranty is assumed, as no defect is present, in the following cases in particular: (a) lack of usability for purposes beyond the customary or agreed use, (b) defects or problems owing to defective assembly or placement into service by the Buyer or third parties, incorrect or negligent treatment, or improper maintenance, (c) natural wear, (d) defects or problems arising from realisation of specifications provided by the Buyer, for example by means of drawings or models, (e) defects or problems owing to rebuilding or reworking of the goods at the Buyer's end.

If an item is defective and notice of the defects is timely given, the Buyer has a right to rectification or to delivery of a replacement, at the Vendor's discretion. If rectification and/or a delivered replacement fail twice in total, the Buyer is entitled to reduce the purchase price by a reasonable amount or to rescind the contract.

If it turns out that products have been wrongfully returned as a consequence of a complaint, the Buyer must assume any costs of shipping, packing and disposal and pay a reasonable fee, to be set at the Vendor's reasonable discretion, for inspection, for inspection of the products, unless the Buyer is not responsible for the breach of duty evident upon the return.

Special provisions for specific services to rims and/or tyres delivered by the customer.

The customer shall not be entitled to any warranty rights for work consisting in the pressing on or off of tyres made of rubber, VULKOLLAN® or other materials, insofar as any product problems that occur do not stem from the seller's sphere of responsibility (e.g. if they are attributable to a defective design or production engineering of the rims and wheels provided by the customer). The same applies to the coating of the customer's own as good as new rims with wheel tyres. Such work is performed as a service - not as a work performance - exclusively at the customer's own responsibility. The seller shall only carry out a visual inspection for obvious defects of the wheel cores/rims and wheels provided by the customer. In the case of press-fitting of tyres, the outer diameter tolerance of the wheel cores/rims is also measured in order to check their suitability for press-fitting.

Beyond this, the seller shall not be subject to any further inspection obligations, in particular no obligation to check the suitability of the material and use, material thicknesses as well as the technical and constructive design of the customer's wheel cores/rims. The burden of proof for the non-existence of technical and constructive defects of the rims and wheels of the customer shall be at the customer's expense.

Liability/Reimbursement for expenses.

Unless willful misconduct, gross negligence or breach of a material contractual duty are present, claims against the Vendor for damages of any kind are excluded.

A “material contractual duty“ is any duty whose fulfilment makes proper performance of the contract possible in the first place and on whose observance the Buyer should normally be able to rely.

The vendor's liability is limited to compensation for the foreseeable damage typical of the contract, insofar as the vendor or his performing agent is only guilty of simple or gross negligence. The preceding limitations and expenses pursuant to Section 284 BGB are waived in so far as claims for damages in lieu of performance are excluded according to the provisions above.

Changes in the burden of proof to the detriment of the buyer are not associated with the provisions of this section.

Disposal.

The disposal of used parts and other items that are no longer usable is the responsibility of the Buyer. Unless legal provisions are enacted that provide otherwise, the Buyer will enter into an appropriate recycling agreement with the Vendor. It is to be assumed that the Contracting Parties will avail themselves of third parties to fulfil their recycling duties.

According to the Packaging Act (VerpackG) § 15, the seller is obliged to take back packaging free of charge. Packaging subject to system participation shall be taken back via the Seller's participation in a dual system in cooperation with Veolia Umweltservice Dual GmbH. The Seller shall take back packaging in accordance with § 15 VerpackG from Buyers who are not private end consumers as defined by the Packaging Act at the Seller's logistics centre at Bredowstrasse 20 in 22113 Hamburg. The costs of transport to this location shall be borne by the buyer. Packaging for international deliveries outside the Federal Republic of Germany is excluded from this and will not be taken back.

Other provisions.

The place of performance for all reciprocal claims is, in the case of contracts with merchants, Hamburg. The courts of the Vendor's principle place of business have exclusive jurisdiction of all disputes with merchants or with persons who have no general jurisdiction in Germany. However, if the Buyer is registered outside the EU and the European Economic Area, the Arbitration Court of the German Institution of Arbitration (DIS e.V.) shall, in deviation from the above provision, have exclusive jurisdiction for all disputes arising from and in connection with the contracts concluded under these General Terms and Conditions and shall decide finally and to the exclusion of the ordinary course of law. The claimant shall be entitled to file a counterclaim before the arbitral tribunal. The place of arbitration shall be Hamburg. The language of the proceedings shall be German. The proceedings and in particular the taking of evidence shall be conducted in accordance with the Rules of the Arbitral Tribunal of the German Institution of Arbitration and the Rules of the 10th Book of the Code of Civil Procedure. In the taking of evidence, the arbitral tribunal shall be guided by the customs of proceedings in German state courts. Procedural principles of common law, such as in particular the production of documents (so-called document production), shall not apply directly or mutatis mutandis. Insofar as one party may have to reimburse the other party for legal fees in connection with the arbitration proceedings, these shall be limited to the costs billable under the German Lawyers' Fees Act (RVG).

General Conditions of Sales and Delivery



German law applies to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

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