

General Sales and Delivery Conditions of Vincent Systems GmbH - EU

1. Scope of Applicability

- (1) These VINCENT SYSTEMS GMBH Conditions apply exclusively; any contractual partner's general terms and conditions such as are opposed to or deviate from these VINCENT SYSTEMS GMBH Conditions shall not be acknowledged by VINCENT SYSTEMS GMBH, unless VINCENT SYSTEMS GMBH has expressly consented in writing to their applicability. These VINCENT SYSTEMS GMBH Conditions will also apply if VINCENT SYSTEMS GMBH, with knowledge of such conditions of a contractual partner which oppose or deviate from these VINCENT SYSTEMS GMBH Conditions, unconditionally executes deliveries.
- (2) All agreements made between the contractual parties for the purpose of executing this Contract are deemed reduced to writing in this Contract.
- (3) These VINCENT SYSTEMS GMBH Conditions will apply only in relation to entrepreneurs within the meaning of § 14 German Civil Code (BGB), when the contract pertains to the operations of the enterprise, as well as to judicial persons of public law and public-law separate estates (*Sondervermögen*) within the meaning of § 310 para 1 BGB.
- (4) These VINCENT SYSTEMS GMBH Conditions also apply for all future transactions with the contractual partner.

2. Offer and Documentation

- (1) The offer of these VINCENT SYSTEMS GMBH Conditions is nonbinding up to the confirmation of a project (*Auftragsbestätigung*).
- (2) The order of a contractual partner is a binding offer. VINCENT SYSTEMS GMBH is entitled to accept this offer within two weeks by the sending of a project confirmation or by sending the ordered goods within this period of time.
- (3) VINCENT SYSTEMS GMBH reserves the rights of title and of utilizing intellectual property, without restriction, in all cost estimates, drawings, documentation, prospecti, project descriptions, and other documents. These documents may be made accessible to third parties only after prior consent by VINCENT SYSTEMS GMBH. Technical data contained therein (including weight and quantity specifications) are compiled in a diligent manner but subject to error. The same applies for all data in sales documentation of VINCENT SYSTEMS GMBH. However, all such information represents no guaranties; in each case, commitments to guaranties require an express confirmation by VINCENT SYSTEMS GMBH.
- (4) VINCENT SYSTEMS GMBH reserves the rights to all modifications serving technical progress, even after the confirmation of a project.

3. Prices and Payment Conditions

- (1) To the extent that nothing to the contrary results from the project confirmation, the prices of VINCENT SYSTEMS GMBH are quoted ex works including loading in the factory; however, excluding packing, freight, transportation, insurance, customs, and the respectively applicable statutory turnover tax.
- (2) VINCENT SYSTEMS GMBH reserves the right, when increases in the price factors – particularly on the basis of conclusions of collective bargaining agreements or increases in materials prices – arise after the conclusion of the Contract, to increase prices correspondingly after the expiration of 6 weeks from the conclusion of the Contract. An accounting of the same will be provided by VINCENT SYSTEMS GMBH to the contractual partner upon request.
- (3) To the extent that nothing to the contrary results from the project confirmation, the purchase price is due for payment immediately and without any reduction. A specific written agreement is required for a reduction through discount.
- (4) To the extent that no contrary terms for payment have been agreed upon, delay in payment will arise 14 days after an invoice is issued. Interest on amounts in delay will be calculated at 8 percentage points over the respective base interest rate according to § 247 BGB. The assertion of an amount of damages greater than this shall not be excluded hereby.
- (5) Notes and checks will only be accepted for conditional payment; the contractual partner shall bear the costs of discounting and honoring. After accepting a note, VINCENT SYSTEMS GMBH is entitled to give the same back in the case that its further acceptance is refused by the German Land Central Bank.
- (6) The contractual partner is only entitled to setoff rights if its counterclaims have been determined in a legally final manner, are uncontroverted or have been acknowledged by VINCENT SYSTEMS GMBH. Moreover, the contractual partner is only authorized to exercise a right of retention to the extent that its counterclaim is based on the same contractual relationship. The contractual partner is not entitled to a right of retention due to partial performance according to § 320 para 2 BGB.
- (7) To the extent that a delivery or performance not subject to turnover tax comes into question, the contractual partner is obligated to provide or assist in providing the necessary proof. For intracommunity deliveries according to § 6 a German Turnover Tax Act (UStG), the contractual partner must disclose its turnover tax number, give proof of its status as an entrepreneur, and assist in sufficiently proper and detailed export documentation as well. Should the exemption from turnover tax not be acknowledged by the German internal revenue office, the contractual partner must indemnify VINCENT SYSTEMS GMBH from and/or pay to VINCENT SYSTEMS GMBH turnover tax, interest, tardiness penalties, and all incidental costs unless VINCENT SYSTEMS GMBH must answer for the non-acknowledgment thereof. VINCENT SYSTEMS GMBH is only obligated to initiate proceedings for a legal remedy upon the request of the contractual partner if the latter, along with indemnification according to the foregoing sentence, gives a reasonable advance for the costs of proceedings for a legal remedy.
- (8) Should, after the project confirmation, VINCENT SYSTEMS GMBH become aware of facts causing justified doubt to arise as to the ability of the contractual partner to pay, VINCENT SYSTEMS GMBH is entitled to demand payment in full or the granting of corresponding security before delivery and/or rescind the contract after a period of time has been set and expired without success. Proof of a material deterioration of assets is deemed to include, along with a delay in payment already incurred, in particular a disclosure from a bank, credit rating service, or from an enterprise in a business relationship to the contractual partner, which disclosure corresponds to the level of care of a proper merchant. Should a delivery already have occurred, such amounts as have been invoiced shall be due for payment immediately, without taking agreed-upon payment conditions into consideration, and possibly subject to a return of acceptance.

4. Delivery Period, Delay in Delivery

- (1) Delivery periods begin at the date of a project confirmation but not before the timely and proper fulfillment of the obligations of the contractual partner, thus particularly not before the furnishing of the documentation, permits, and consents to be obtained by the contractual partner as well as not before receipt of the agreed-upon prepayment.
- (2) Delivery periods and deadlines are deemed met when, up to their expiration, the object to be delivered has left the factory or the warehouse or the readiness of said object for shipping has been communicated. The same shall not apply if, by contract, an acceptance or a duty of installation has been agreed upon.
- (3) In a case of force majeure or other unforeseeable, extraordinary, and not wrongful circumstances, e.g. a disruption of operations, strike, lock-out, intervention by authorities, difficulties in procuring energy, etc., the delivery period – if VINCENT SYSTEMS GMBH is hindered by the foregoing from the timely fulfillment of its obligations – will be extended by the period of the hindrance and a reasonable restart time. The same will also apply if said circumstances are encountered by preliminary suppliers. The beginning and end of these types of circumstances will, in important cases, be communicated as soon as possible by VINCENT SYSTEMS GMBH to the contractual partner. Should, through these circumstances set forth, a delivery or performance become impossible or impracticable, VINCENT SYSTEMS GMBH shall be free from the delivery obligation. Should a delivery period be extended or VINCENT SYSTEMS GMBH be freed from a delivery obligation, the contractual partner may not base claims for the redress of damages upon the foregoing. To the extent that VINCENT SYSTEMS GMBH is free from a delivery obligation, VINCENT SYSTEMS GMBH will grant back preliminary performances of the contractual partner as may have been made. 115471-0309 2/3
- (4) Should VINCENT SYSTEMS GMBH fall into delay in delivery, the contractual partner – to the extent the latter credibly substantiates that it has incurred damages through said delay – is entitled, for each completed week of said delay, to demand a flat-rate compensation for delay in the amount of 0.5% of the value of the delivery but not to greater than 5% of the value of the delivery. Further claims for redress of damages and of outlays of the contractual partner due to delay in delivery are excluded. The same does not apply to the extent that the delay in delivery is based upon the breach of a material contractual duty as well as to the extent of cases of intentional misconduct, or of gross negligence and/or of injury to life, limb, or health for which liability is mandatory; a modification of the burden of proof to the disadvantage of the contractual partner is not made binding hereby.
- (5) The statutory right of rescission of the contractual partner remains unaffected but has as a prerequisite that VINCENT SYSTEMS GMBH must be answerable for the tardiness. The contractual partner is obligated at the request of VINCENT SYSTEMS GMBH to explain within a reasonable period of time whether it is rescinding the contract after the time period expires due to tardiness of delivery and/or is demanding redress of damages in place of the delivery or redress of outlays or both, or is insisting on delivery.

5. Delivery, Risk of Loss, and Shipping

- (1) Partial deliveries are permitted to the extent practicable.
- (2) At the period at which transfer to the shipper or freight transporter occurs, however at the point of leaving the factory or warehouse at the latest, the risk of loss will pass over to the contractual partner. The same shall apply even if a delivery free of freight has been agreed upon. Shipping shall occur as a commission (*Auftrag*) of the contractual partner.
- (3) Should shipping be tardy as a result of circumstances for which the contractual partner is answerable, the risk of loss will pass over to the contractual partner from the day of readiness for shipping forward. However, VINCENT SYSTEMS GMBH is obligated to procure, at the request and cost of the contractual partner, the insurance requested by the latter.
- (4) At the request and cost of the contractual partner, the shipment will be insured by VINCENT SYSTEMS GMBH against theft, breakage, transport, fire and water damage, as well as against miscellaneous insurable risks.

6. Retention of Title

- (1) VINCENT SYSTEMS GMBH reserves title to delivered goods up to its receipt of all payments arising from the business relationship with the contractual partner. In cases of conduct of the contractual partner not being in compliance with the contract, particularly in cases of delay in payment, VINCENT SYSTEMS GMBH is entitled to take back delivered goods. The taking back or asserting of a retention of title requires no rescission by VINCENT SYSTEMS GMBH. In cases of such conduct in the foregoing sentence or of a pledge by VINCENT SYSTEMS GMBH of the delivered goods, there shall be no rescission of the contract unless VINCENT SYSTEMS GMBH has expressly declared the same in writing. VINCENT SYSTEMS GMBH is authorized to make economic use of delivered goods after taking said goods back. The proceeds from such economic use are to be applied – with a deduction for the reasonable costs of such use – against the liabilities of the contractual partner.
- (2) The contractual partner is obligated to handle delivered goods with care and, at the request of VINCENT SYSTEMS GMBH, sufficiently insure the same against damage for the duration of the retention of title. Already as of now, the contractual partner assigns to VINCENT SYSTEMS GMBH any claims against said insurance.
- (3) In cases of pledges or other interventions by third parties, the contractual partner must notify VINCENT SYSTEMS GMBH without delay in writing, so that VINCENT SYSTEMS GMBH may bring a complaint according to § 771, Code of Civil Procedure (ZPO). To the extent that the third party is not able to redress VINCENT SYSTEMS GMBH for the in-court and out-of-court costs of a complaint pursuant to § 771 ZPO, the contractual partner must assume liability for the shortfall VINCENT SYSTEMS GMBH incurs by the foregoing.

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(4) The contractual partner is entitled to further sell the delivered goods in the ordinary course of business; however, the contractual partner already as of now assigns to VINCENT SYSTEMS GMBH all receivables in the amount of the end invoice total (including turnover tax), which receivables arise from the further disposition as against its buyers or third parties, and particularly independent of whether the delivered goods have been further sold with or without having been processed. The contractual partner remains authorized to collect upon these receivables after their assignment as well; this shall not affect the authorization of VINCENT SYSTEMS GMBH to collect upon receivables itself. VINCENT SYSTEMS GMBH is obligated, however, to not collect upon a receivable as long as the contractual partner complies with its payment obligations from out of the proceeds it takes in, is not in delay of payment, and particularly that no motion has been filed for the opening of insolvency proceedings or no cessation of payments is at hand. Should the duty to not collect be inapplicable, VINCENT SYSTEMS GMBH may demand that the contractual partner notify VINCENT SYSTEMS GMBH of the assigned receivables and the obligors to the same, give all information necessary for collection, hand over the appropriate documentation, and communicate the assignment to its obligors.

(5) The processing or reconstruction by the contractual partner of the delivered good shall always be made for VINCENT SYSTEMS GMBH. Should the delivered good be processed together with other objects not belonging to VINCENT SYSTEMS GMBH, VINCENT SYSTEMS GMBH will acquire joint title in the new item in the proportion of the value of the delivered good to the other, processed objects at the point in time of such processing. In all other regards, the same is deemed to apply for the item created through processing as for such goods as were delivered subject to the retention of title.

(6) Should the delivered good be inseparably mixed with other objects not belonging to VINCENT SYSTEMS GMBH, VINCENT SYSTEMS GMBH will acquire joint title to the new item in the proportion of the value of the delivered good to the other, mixed objects at the point in time of such mixing. Should this mixing occur in such a manner that the item must be viewed as a principal item of the contractual partner, it is deemed as agreed upon that the contractual partner transfers joint title pro rata to VINCENT SYSTEMS GMBH. The contractual partner shall keep for VINCENT SYSTEMS GMBH such sole or joint title as is hereby created.

(7) In order to provide security for a receivable, the contractual partner also assigns to VINCENT SYSTEMS GMBH all such receivables, including incidental rights, which receivables the former is entitled to in relation to third parties, including such claims as have inured to it by joining the delivered good with a parcel of land.

(8) VINCENT SYSTEMS GMBH is obligated, at the request of the contractual partner, to release such security as to which the former is entitled, to the extent that the realizable value of such security exceeds by more than 10% the receivables to which security is to be given; the choice of such security as is to be released is upon VINCENT SYSTEMS GMBH.

(9) To the extent that the law of the location in which a delivery item is to be found does not permit a retention of title, the seller may exercise all rights that the latter may reserve with respect to such delivery item. The contractual partner is obligated to assist in measures the seller wants to take for the protection of the seller's rights of title, or in their place, other rights of security in such delivery item.

7. Legal Defects, Defects as to Quality

(1) VINCENT SYSTEMS GMBH will provide the agreed performances according to such level of technology as applies at the time of the ordering of a project, as well as according to the respective provisions of law, while observing the standard of care typical of the industry.

(2) To the extent that a performance of VINCENT SYSTEMS GMBH contains defects, legally or as to quality (as follows: defects), the cause of which was already existent as of the point in time of the transfer of risk of loss, the contractual partner has a claim, at the choice of VINCENT SYSTEMS GMBH, to subsequent performance through rectification of defects or supplemental delivery. The outlays necessary for the same, e.g. the costs of wages, materials, transport, and travel will be borne by VINCENT SYSTEMS GMBH only to the extent that such outlays are not increased by a delivery item having been brought supplementarily to a place other than to the statutory seat of the contractual partner, unless such bringing corresponds to due and proper custom. Title to replaced parts is with VINCENT SYSTEMS GMBH, and such parts are to be returned to VINCENT SYSTEMS GMBH.

(3) Should the subsequent performance fail, the contractual partner is entitled at its choice – notwithstanding any claims for the redress of damages or outlays pursuant to section 8 – to decrease remuneration or – to the extent the breach of duty of VINCENT SYSTEMS GMBH is not only immaterial – to rescind the contract.

(4) The prerequisites for liability of VINCENT SYSTEMS GMBH for defects are that
 a) the latter are not predicated upon unsuitable or noncustomary use, erroneous assembly and/or placement into service by the contractual partner or third parties, natural wear and tear, erroneous or neglectful handling, unsuitable means of operation, exchanged work materials, defective construction, chemical, electrochemical, or electrical influences – unless these circumstances must be attributable to the fault of VINCENT SYSTEMS GMBH.
 b) the contractual partner has properly fulfilled its investigation and reprimand obligations owed according to § 377 German Commercial Code (HGB). In this respect, defects must be reprimanded in writing within 10 days of their discovery.
 c) the contractual partner – under consideration of a reasonable reservation of warranty pursuant to subsection 7.8 – is not in delay of payment.

(5) In order that VINCENT SYSTEMS GMBH may provide, at its just discretion, all improvements and replacements as seem necessary, the contractual partner must, with the understanding of VINCENT SYSTEMS GMBH and after the same, give the time and opportunity required. Otherwise VINCENT SYSTEMS GMBH is released from such consequences of damage as occur because the contractual partner has not given VINCENT SYSTEMS GMBH the time and opportunity required in order to provide the necessary measures to abate defects and for replacements. Only in urgent cases of endangerment to operational safety and for defending against disproportionately great damage – in which cases VINCENT SYSTEMS GMBH must be immediately notified – or if VINCENT SYSTEMS GMBH is in delay of abating a defect, the contractual partner has the right to abate the defect itself or have the same abated through third parties, and to demand redress of the necessary costs by VINCENT SYSTEMS GMBH.

(6) Claims due to defects become time-barred in **24 months**. This shall not apply to the extent that, pursuant to §§ 438 section 1 subsection 2 (construction work, items in construction work), 479 section 1 (recourse claims), 634 a section 1 subsection 2 (defects in construction) BGB, longer periods of time are provided for mandatorily. For replacement items and/or rectifications of defects, VINCENT SYSTEMS GMBH is liable up to the expiration of the warranty period applicable to the original delivery item.

(7) Recourse claims of the contractual partner against VINCENT SYSTEMS GMBH exist only to the extent that the contractual partner has entered into no such agreements with its purchasers as extend over and above the statutory claims due to defects. Subsection 7.2 sentence 2 applies accordingly.

(8) In cases of reprimands due to defects, payments of the contractual partner may be retained only in a scope that stands in reasonable proportion to the defects as arisen and if the claims of the contractual partner are uncontroverted or have been determined in a legally final manner. Should a reprimand due to a defect have been raised unjustly, VINCENT SYSTEMS GMBH is entitled to demand that its outlays so occasioned be redressed by the contractual partner.

8. Claims for the Redress of Damages and Outlays

(1) The liability of VINCENT SYSTEMS GMBH is as according to statutory provisions to the extent that the contractual partner asserts claims for the redress of damages or outlays (as follows: claims for the redress of damages), which claims are predicated upon intentional misconduct or gross negligence – including intentional misconduct or gross negligence of representatives of VINCENT SYSTEMS GMBH or persons attributable (*Erfüllungsgewährten*) to VINCENT SYSTEMS GMBH. Further, VINCENT SYSTEMS GMBH is liable as according to statutory provisions if VINCENT SYSTEMS GMBH has faultily breached a material contractual duty, as well as in cases of injury to life, body, or health and to the extent that VINCENT SYSTEMS GMBH has assumed guaranties.

(2) The redress of damages for the breach of a material contractual duty is limited to the foreseeable damages of a type typically incurred, unless intentional misconduct or gross negligence is present and unless liability exists for injury to life, body, or health or from assumed guaranties. In this regard, such claims for the redress of damages become time-barred within **24 months**.

(3) In all other regards, liability for the redress of damages – without consideration as to the legal nature of the asserted claim – is excluded. In this regard, VINCENT SYSTEMS GMBH particularly is not liable for damages that are not incurred to the delivery item itself, such as e.g. lost profits and other damages to property of the contractual partner.

(4) The mandatory provisions of the German Product Liability Act remain unaffected hereby.

(5) Claims for the redress of outlays of the contractual partner are limited to the amount of the interest the latter has in the fulfillment of the contract.

(6) To the extent that liability of VINCENT SYSTEMS GMBH is excluded or limited, the same shall apply for the personal liability of employees, workers, co-workers, and persons attributable to VINCENT SYSTEMS GMBH.

9. Nondisclosure and Confidentiality

(1) The contractual partners are obligated not to make economic use of, use, or make accessible to third parties, without prior written consent of the respective other contractual partner, all such economic, technical, and other information and knowledge as is made accessible by the respective other contractual partner or otherwise becomes known during the preparation and execution of orders.

(2) The obligation pursuant to subsection 1 shall not apply to information and knowledge which
 - was already known to VINCENT SYSTEMS GMBH before the order,
 - VINCENT SYSTEMS GMBH legally obtained from third parties,
 - became known in general when issuing the order,
 - subsequently became known in general without infringing the obligation pursuant to subsection 1.

(3) The obligation pursuant to subsection 1 shall apply to both contractual partners for an additional two years after the ending of the contract.

(4) The contractual partner acknowledges the necessity of scientific lectures and publications by VINCENT SYSTEMS GMBH, and shall not unjustly refuse such consent as may be required pursuant to subsection 1.

10. Data Protection

The contractual parties shall process or use personal data of the respective other contractual party only for purposes agreed upon by contract and in compliance with the statutory provisions.

11. Place of Performance, Jurisdiction, and Applicable Law

(1) The place of performance for a delivery is the manufacturing factory and/or the warehouse of VINCENT SYSTEMS GMBH. The place of performance for payments is the official location of VINCENT SYSTEMS GMBH.

(2) The place of jurisdiction is the official location of VINCENT SYSTEMS GMBH. However, VINCENT SYSTEMS GMBH is entitled to bring legal action against the contractual party at a different statutory jurisdiction as well.

(3) The contract is subject to the laws of the Federal Republic of Germany with the exclusion of its conflict-of-laws provisions, of the uniform United Nations sales law, or of other conventions concerning the law of sales of goods.

Vincent Systems GmbH

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