

GENERAL TERMS AND CONDITIONS

A. Vogt GmbH & Co. KG | as at 01.06.2019

§1 SCOPE

01. These terms and conditions apply exclusively to entrepreneurs, legal persons under public law or special assets under public law as defined by § 310 paragraph 1 of the German Civil Code, and in the case of future transactions even without being referred to. The buyer's silence about our terms and conditions will be considered to be its agreement.
02. An entrepreneur is a natural or legal person or a partnership with legal capacity concluding a legal transaction in pursuance of his/their commercial or independent professional occupation.
03. Goods and services will be provided by A. Vogt GmbH & Co. KG exclusively on the basis of these general terms and conditions in the version applicable at the time of the order, unless these are amended by written agreements between A. Vogt GmbH & Co. KG and the buyer.
04. In the event of any conflict between the provisions, the following order of precedence will apply:
 - a. these general terms and conditions
 - b. differing terms and conditions, insofar as they have been expressly acknowledged by A. Vogt GmbH & Co. KG
 - c. statutory regulations of Germany (German Commercial Code (HGB), German Civil Code (BGB))

§2 SALE CONDITIONS

01. The terms and conditions apply to all current and future business relations. Differing, conflicting or supplementary general terms and conditions will not, even if they are known, become part of the contract, unless they have been expressly agreed to in writing.
02. Any information, agreements, consultations etc., whether verbal or in writing, are non-binding and are not guaranteed properties. They need to be in writing in order to be binding, with express reference to their legally-binding nature.
03. Any reference to samples of any kind, standards, similar technical codes, other technical information, descriptions and illustrations of the delivery item in quotations and brochures is only a performance description and not a guarantee of properties. It is only to be regarded as an approximation; we reserve the right to deviations customary in the industry, unless otherwise is agreed.
04. Application-related advice provided verbally, in writing, in illustrations and through tests is provided to the best of our knowledge, but is considered to be non-binding advice, including in relation to any property rights of third parties. The advice does not release the customer from its obligation to check our advice and test our products for their suitability for the intended processes and purposes. The application, use and processing of our products and the products manufactured by the customer on the basis of our application-related advice are outside of our control and therefore the sole responsibility of the customer.

§3 CONCLUSION OF CONTRACT, SERVICE CONTENT

01. The offers made by A. Vogt GmbH & Co. KG are without obligation. A contract will not be formed until the order is confirmed in writing, or if this has not taken place, until the actual delivery by us.
02. We have the right to make the acceptance of any conclusion of contract dependent on an advance payment up to the amount of the total price of the delivery including the transport costs.
03. A. Vogt GmbH & Co. KG has the right to make at any time changes to the delivery items which it considers to be necessary for technical or model-upgrade reasons, provided that these do not impair the functionality of the delivery item.
04. Unless otherwise is expressly agreed in writing, the rights to drawings, models, cost estimates and other execution documents or tools which are used for the production of a delivery item will belong to us, even if they have been created at the cost of the customer. In this respect, the customer is in particular not entitled to the return of the execution documents or tools.
05. Deliveries of up to 10% more or less than the order quantity will be considered to be performance in accordance with the contract. The order will be understood to be in this respect plus or minus a quantity deviation of up to 10%. The customer is obliged in this respect to accept and pay for the delivered quantity. Deviations from samples, drawings and previous deliveries will be avoided as far as technically feasible.

06. The conclusion of the contract is subject to the reservation that A. Vogt GmbH & Co. KG is supplied on time, in full and correctly by its suppliers. This only applies in cases where we are not responsible for the non-supply, and in particular where a matching covering transaction has been concluded with our supplier. Unless otherwise has been expressly and formally agreed, we will not accept any procurement risk or offer any guarantee in the legal sense.
07. We have the right to provide partial performance or make partial deliveries, whereby only the respective proportionate purchase price will be charged for this.
08. Deliveries will be made, unless otherwise is agreed, uninsured at the cost of and for the account of the customer.
09. In the case of call-off orders, we have the right to procure the material for the whole order and manufacture the entire order quantity.
10. Automated call-offs: Our order confirmations result under no circumstances in the acknowledgement of framework agreements of any kind. Any acknowledgement of accompanying agreements / documents in so-called call-offs, even if explicit reference is made to their irrevocable nature in these, requires the express agreement in writing of the management of A. Vogt GmbH & Co. KG.
11. For a contract to be concluded, our order confirmation has to be prepared and sent. Under no circumstances is the absence of our order confirmation to be interpreted as tacit acknowledgement. Any contract provisions which contain a time limit for the issue of an order confirmation and as a result of the non-confirmation a tacit conclusion of contract are ineffective.

§4 PRICES, PAYMENT TERMS AND DEFAULT OF PAYMENT

01. Our prices are "ex works", unless otherwise has been agreed with the buyer. Packaging costs are not included in the price. Statutory VAT is not included in our prices and is shown separately in the invoice at the statutory rate applicable on the day of invoicing.
02. Our services and/or deliveries will be charged at the prices applicable on the date of delivery or service, unless a fixed price has been expressly agreed.
03. If delivery is to countries outside of the European Union, additional costs may be incurred for which we are not responsible, e.g. duties, taxes and money transfer fees (transfer or exchange fees charged by banks), and which will be borne by the buyer. Money transfer fees incurred will also be borne by the buyer in cases in which the delivery takes place in an EU member state, but the payment was executed outside of the European Union.
04. The choice of the mode of shipment and packaging lies with us. Shipping costs incurred are not included in the purchase price. They will be shown separately on the invoice and will be borne additionally by the buyer, unless delivery free of shipping costs has been agreed. If the buyer stipulates a different mode of shipment or packaging, it will be charged the additional costs, even if free delivery including packaging had been agreed.
05. The customer does not have the right to refuse performance in the course of business with traders. The customer does not have right of retention. This will not apply if the counterclaim is undisputed or established in law. Offsetting by the customer is only allowed if it has been expressly declared that its counterclaims are undisputed or if its counterclaims are established in law.
06. The payment has to be made so that the amount is available to us on the due date. The costs of payment transactions will be borne by the buyer. In the case of default we will have the right to charge interest in the amount of 9 percentage points above the respective base rate in accordance with § 1 of the Discount Rate Transition Act (Diskontsatz-Überleitungs-Gesetz) of 9 June 1998 (Federal Law Gazette (BGBl), p. 1242) or, if proof is provided of a higher rate for debit interest to be paid by us to our bank, this interest rate.
07. If we become aware of circumstances after the conclusion of the contract which give us cause to doubt the buyer's ability to pay, we can make further deliveries dependent on an advance payment for the goods by the buyer. We can set the buyer a reasonable deadline for the advance payment for the goods and withdraw from the contract or demand compensation due to non-performance if we do not receive the advance payment in time. If we have already delivered the goods, the purchase price will be due immediately without any deduction regardless of any agreed payment deadlines. We can also prohibit the resale of the goods delivered under retention of title, demand their return or the transfer of the indirect ownership at the cost of the customer, and cancel a direct debit authorisation. Doubts concerning the buyer's ability to pay will be justified if, among other reasons, an application is made to open insolvency proceedings for the buyer's assets or it does not make payments to us or third parties on time.
08. § 284 of the German Civil Code (Bürgerliches Gesetzbuch, BGB) does not apply.
09. Invoices will be considered to be order confirmations for received orders, if these have not been confirmed separately within a reasonable period of time.
10. Our invoices are to be paid, unless another payment term has been agreed, within 30 days of the invoice date without deduction. In cases where invoices are sent and / or goods are delivered abroad, the payment term will be advance payment. The place of fulfilment for the payment of the purchase price is the registered office of A. Vogt GmbH & Co. KG.
11. With regard to costs for special services, e.g. the creation or modification of tools, the provision under § 4 number 1 below applies.
12. Early-payment-discount provisions have to be agreed with us separately and expressly in writing and are printed on our invoices. Provisions which deviate from those printed on the invoice (e.g. verbal agreements) are not valid. The early-payment-discount period will be stated in calendar days

(not in working days!). The early-payment-discount period will start on the invoice date. In order to receive the early-payment-discount deduction, the invoice is to be settled exclusively by transfer so that the amount is available to us on the last day of the early-payment-discount period. The early-payment discount will only be granted if all of the payment obligations from previous deliveries have been met.

13. Any failure to meet payment dates will result in all remaining invoices which are not yet payable for goods already delivered becoming payable and justify the cancellation of payment terms. For services not yet performed we can also demand advance payment and the provision of security. If the buyer is in default of payment for previous deliveries or partial deliveries, we will have the right to withhold deliveries or partial deliveries or, after a period of grace granted for payment has passed without success, to withdraw from the contract without having to pay compensation for any losses incurred.
14. Bills of exchange and cheques will not be accepted.
15. In the case of default of payment, incoming payments will be offset first against the interest, then against the costs and lastly against the main claim.
16. In the case of partial performance, these terms and conditions also apply for the individual delivery, if this is invoiced separately.
17. We do not accept payment by credit card, direct debit or Paypal.

§5 TOOLS

01. Tool and mould costs are allocated proportionally to customers. The quoted tool costs are calculated approximately and subject to technical feasibility. Cost increases resulting from unforeseeable difficulties in the manufacture of the tool are charged to the customer at up to 10% above the quoted price. If the cost of the tool manufacture increases by more than 10% due to customer requirements that were unforeseeable or received at a later date, a new quotation for the tool costs and if applicable part prices will be prepared.
02. Invoices for services, e.g. the creation or modification of tools, are to be paid net within 10 days of the invoice date, and at the latest 10 days after presentation of the sample.
03. The customer will not acquire any right to the tools and moulds themselves as a result of the proportionate payment of costs for tools and moulds. With regard to our design services, the aforementioned items remain our property. The customer does not have unlimited right of disposal. The customer will have limited right of disposal if we culpably do not meet the delivery obligations. We will not be culpable in the case of force majeure (strike, lock-out, natural disasters, delays for which the presupplier is culpable, delays due to the carrier, delays due to official measures and orders).
04. We handle customer tools with care and expertise. We will only be liable for damage if the damage was caused due to gross negligence in our plant. We will have the option of rectifying the damage in-house.
05. Costs for tool maintenance which are incurred due to normal signs of wear will be charged to the customer. The customer agrees that it will inform us immediately in writing of any identified deterioration in the mould, with the exception of the visual and dimensional checks agreed in writing with us. The estimated tool lives based on experience are, unless otherwise has been expressly agreed in writing, to be considered to be non-binding reference values.
06. In the event of the cancellation of the order by the customer, the customer will not be entitled to handover of the tool, mould and design drawings.
07. Any different agreement that conflicts with these provisions can only be concluded individually and in writing.

§6 RETENTION OF TITLE

01. A. Vogt GmbH & Co. KG will retain the title to the goods purchased and delivered until full payment of all present and future claims relating to the purchase agreement and ongoing business relationship.
02. The buyer is not authorised to pledge to third parties or pledge as security the goods subject to retention of title. However, it does have the right to resell the goods subject to retention of title in the normal course of business. The buyer assigns now its resulting claims against its business partners to A. Vogt GmbH & Co. KG. We accept this assignment.
03. In the event of a breach of the contract by the buyer, in particular in the event of the non-payment of the purchase price due, we will have the right to withdraw from the contract in accordance with the statutory regulations and demand the return of the goods subject to retention of title. If the buyer does not pay the purchase price, we may only assert these rights if we have unsuccessfully set the buyer a reasonable deadline for payment beforehand or the setting of such a deadline is unnecessary in accordance with the statutory regulations.
04. Upon our request, the customer has to notify the buyer immediately, unless we inform its buyer ourselves, of the assignment to ourselves and provide us with proof of the notification, as well as send with this notification the information and documents required for the collection of the assigned claim.
05. If the goods subject to retention of title are mixed with other goods which do not belong to us, we will acquire joint ownership of the new object in

proportion to the goods subject to retention of title to the other combined or mixed items. In the event of any processing of the goods subject to retention of title that puts an end to the ownership goods, we will be considered to be the manufacturer, which according to § 950 of the German Civil Code will acquire ownership of the new item. If other goods which are not owned by us are also processed, we will only acquire joint ownership in proportion to the share of our goods in the value. The provision of the agreed retention of title applies to the newly produced items as well as the sold items, so that the expectant right of the buyer to the sold items continues to exist for the new items.

06. Upon request by the customer, we are obliged to release the securities if their realisable value exceeds our claim by more than 10%. We reserve the right to choose the securities to be released.
07. In the event of attachment or any other seizure by third parties, the customer will have to inform us immediately, object to the seizure and advise that we are the (joint) owners.
08. If the customer does not meet a payment deadline, is in breach of any other contractual agreements or if we become aware of circumstances which are likely to reduce the customer's creditworthiness, we will have the right to prohibit the resale of goods subject to retention of title, demand their return or transfer of indirect ownership to us at the cost of the customer, to cancel the direct debit authorisation and/or demand the payment of amounts collected by the customer or, if the goods have already been resold but all or part of the amount owed has not been paid, to demand payment directly from the customer's buyer.
09. We have the right to demand the return of items owned by us if we become aware of circumstances which appear to put the settlement of our claim by the customer at risk. A right of retention can only be exercised against this right of return in accordance with the provisions agreed above under number 3.4. The customer hereby gives its consent that the persons tasked by us with the collection may for this purpose enter and drive on the premises where the items are located.

§7 DELIVERY PERIOD

01. The delivery period starts on the day of our order confirmation, but not before all of the details concerning the execution of the order have been fully clarified.
02. The agreed delivery period will be extended, without prejudice to our rights arising from default by the customer, by the time by which the customer is in default with its obligations under this or another contract. This will also apply mutatis mutandis if a delivery date has been agreed.
03. If we are in default ourselves, the customer has to grant us a reasonable period of grace. After this period has passed, it may withdraw from the contract if it has not been notified by this time that the goods are ready for delivery.
04. The extended liability of § 287 clause 1 of the German Civil Code is excluded.
05. Events of force majeure will entitle us to delay the delivery by the duration of the disruption and a reasonable start-up time or to withdraw from the contract due to the part not yet performed. Industrial action such as strikes, lock-out and other circumstances which we have to bear as part of our operating risk are not considered to be cases of force majeure. The customer may demand that we declare whether we want to withdraw or deliver within a reasonable period of time. If we make no declaration, the customer can withdraw.
06. Orders are accepted on condition that the customer is solvent and creditworthy. If it is established later that this is not the case, we can make the performance of the contract dependent upon payment in advance or the provision of security, or withdraw from the contract.
07. Deliveries of up to 10% more or less than the order or call-off quantity will be considered to be performance in accordance with the contract.
08. Partial deliveries are allowed. In the case of contracts with ongoing delivery in partial quantities, the call-off quantities and delivery dates are to be determined at the time of conclusion of contract. If this has not happened or in the event of a breach of a corresponding agreement, we will have the right, at our reasonable discretion, to set a deadline for the acceptance of the whole or remaining quantity.

If the buyer does not call off or accept the whole or remaining quantity by this date, it will be in default of acceptance. In this case A. Vogt GmbH & Co. KG will have the right to grant the buyer a period of grace of 8 days and declare that we will refuse delivery after this period has passed. After the period of grace has passed without success, we will have the right to withdraw from the contract and in the specific case demand compensation for non-performance. A period of grace does not need to be set if the buyer seriously and finally refuses to accept or is obviously unable to pay the purchase price within this period.

§8 DELIVERY, TRANSFER OF RISK, ACCEPTANCE AND DEFAULT OF ACCEPTANCE

01. Delivery is ex warehouse, which is also the place of fulfilment. At the request and cost of the buyer the goods will be sent to another destination. With regard to the shipment of the goods, we can choose the means of transport, in particular the transport company, transport route and packaging ourselves with the exclusion of any liability. This exclusion will not apply if one of our senior executives has acted in the course of business with at least gross negligence.
02. A. Vogt GmbH & Co. KG has the right to make partial deliveries to a reasonable extent.

03. The risk of accidental loss or accidental deterioration of the goods will be transferred to the buyer as soon as the delivery item is handed over to the person responsible for transport and leaves the warehouse of A. Vogt GmbH & Co. KG for the purpose of shipment. This also applies if the delivery is carriage paid. If delivery items are damaged by the person responsible for transport, A. Vogt GmbH & Co. KG will upon being informed of this by the buyer assign any claims against the transport person to the buyer.
04. We only have to take out transport insurance if we are expressly asked to do so by the customer. The costs will be borne by the customer.
05. If the buyer is in default of acceptance, fails to cooperate or a delivery is delayed due to other reasons for which the buyer is responsible, we will have the right to demand compensation for the resulting losses including additional expenditure (e.g. storage costs). Our further statutory rights remain unaffected.
06. If an acceptance inspection has been agreed, this will be the time relevant for transfer of risk. In addition the statutory regulations of "Werkvertragsrecht" (the law governing contracts for work and services) apply for agreed acceptance. The transfer or acceptance will also be deemed to have taken place if the buyer is in default of acceptance.

§9 WARRANTY AND LIABILITY

01. For the buyer to be able to make claims for defects, it is necessary that it has met its legal duties of inspection and notification (§ 377 of the German Commercial Code (HGB)). In order to maintain its warranty rights, the buyer has to formally notify of wrong deliveries, deviations in quantity or obvious defects without delay after delivery and defects that are not obvious without delay after their discovery.
02. Claims can only be made for obvious defects if the entrepreneur is notified of these defects without delay. In addition, § 640 para. 2 of the German Civil Code (BGB) applies.

The notification will be deemed to have been made without delay if it is made within 8 days, whereby the deadline will be deemed to have been met if the notification has been sent in due time. Notwithstanding this duty of inspection and notification, the buyer has to notify obvious defects in writing within 8 days of delivery; here too the deadline will be deemed to have been met if the notification has been sent in due time.

If the buyer fails to duly inspect the delivery and/or notify of defects, A. Vogt GmbH & Co. KG's liability for the defects that have not been notified is excluded.

03. The defective delivery items may only be returned for inspection and any rectification of defects with our consent. The freight costs are to be presented by the customer. Transport costs will only be refunded if the notification of defects is justified.
04. Where significant modifications or changes have been made to the goods (i.e. if the goods are no longer in the condition in which they were delivered), claims on the basis of notification of defects will be excluded if it was expressly or tacitly decided not to inspect the goods.

Warranty cannot be provided for those defects which are caused by improper storage of the goods, for faults caused by normal wear, external influences, maintenance errors or by incorrect handling of the delivery by the buyer or if changes are made without the entrepreneur's consent, unless the buyer can prove that this did not have any effect on the defect / damage that has occurred.

For the delivery of goods made out of rubber, the following special provisions also apply:

- a. Finished parts must never be stored outdoors and near high-energy radiation.
- b. Solar radiation, atmospheric oxygen and atmospheric humidity can have a negative impact on the material properties.
- c. When storing rubber parts, they have to be kept away from solvents, oils, grease and general chemicals, unless the delivered material is especially suited to this environment.
- d. Dimensional checks are to be carried out immediately on receipt of the goods, if the goods are at room temperature (+20 °C). Higher or lower temperatures may result in incorrect measured values due to the expansion or contraction of rubber parts. Goods which are too hot/cold are to be stored in a dry location and brought to room temperature before the dimensional check.
- e. As we generally do not know the precise storage conditions, we can only accept notifications of defects concerning shape, dimensions and changes to the surface within 8 days of delivery. This only applies to notifications of defects which clearly do not concern manufacturing defects.
05. Minor, acceptable deviations in the dimensions and designs will not establish any warranty rights, unless absolute adherence has been expressly agreed. Technical improvements and necessary technical changes will therefore be considered to be in accordance with the contract if they are reasonable and do not impair usability.

06. In the case of short deliveries we will, taking into account the circumstances, either make an additional delivery or issue a credit. In this case the contract partner cannot demand compensation. A. Vogt GmbH & Co KG has the right, as it chooses, to remedy defects in the delivery items either by rectifying the defect or by supplying a defect-free item (supplementary performance). If the supplementary performance fails pursuant to § 440 clause 2 BGB, the customer may, as it chooses, demand a reduction in the payment or withdraw from the contract. In the case of minor defects, withdrawal is excluded. If the buyer chooses to withdraw from the contract due to a defect of title or quality after unsuccessful supplementary performance, it will not be entitled to compensation due to the defect as well.
07. Our liability, regardless of the legal basis, is limited to wilful intent and gross negligence.
This exclusion of liability does not apply
 - a. to damages caused as the result of the absence of a guaranteed property and especially if the guaranteed property was to prevent the occurrence of damage,
 - b. if we are in breach of primary obligations of the contract or material contractual obligations,
 - c. to claims under the German Product Liability Act (Produkthaftungsgesetz),
 - d. to cases of incapacity and impossibility.
05. If the notification of defect proves to be unjustified and rectification measures were carried out in these cases at the instigation of the buyer, the buyer will pay compensation for the costs. This will include, in addition to the cost of material and labour, other (customary) expenses.
06. The warranty period is one year from delivery of the goods. This will not apply if the customer has not notified us of the defect in a timely manner (number 8.1 and 8.2 of this clause).
07. Claims for defects are subject to a limitation period of 12 months after delivery of the goods delivered by us to the buyer. The limitation period will start to run when the goods are made available or handed over to the person responsible for transport. For claims for compensation in cases of wilful intent and gross negligence and in cases of injury to life, limb or health which are due to a deliberate or negligent breach of obligations by the user, the statutory limitation period will apply.

§10 WITHDRAWAL

For legal transactions between A. Vogt GmbH & Co. KG and the buyer, the provisions relating to right of withdrawal in §§ 312 ff. BGB do not apply.

§11 COPYRIGHTS

01. The customer is liable for ensuring that the use of drawings, samples and models sent in do not infringe the rights of third parties. If third parties prohibit us, referring to property rights, in particular from manufacturing and delivering such products, we will have the right, without having to examine the legal situation, to cease any further activity in this respect and claim compensation. The customer also has to indemnify us against all disadvantages affecting us as a result, in particular against claims for compensation by third parties.
02. For drawings, samples and models created by us through our design services, copyright law applies with regard to any kind of use. The buyer agrees that it will in any event comply with these copyright laws, including if a legally-binding contract is not concluded. Any damages resulting from non-compliance with copyright laws will entitle us to claim compensation. The drawings, samples and models sent in by us may not be made available to any third parties without our express consent and may not be made available to uninvolved third parties in trade fairs, exhibitions and/or other publications.

§12 PLACE OF FULFILMENT, PLACE OF JURISDICTION, PLACE FOR RESCISSION OF CONTRACT

01. The place of fulfilment and jurisdiction for all disputes with traders, legal persons under public law and special assets under public law is the location of our registered office. We have the right, though, to bring an action against the buyer before its local court. We can also choose to instruct the Deutsche Institution für Schiedsgerichtsbarkeit (DIS) e.V. (German Institution of Arbitration), Marienforst Straße 52, 53177 Bonn, to handle cases, without recourse to the ordinary courts of law.
02. The law of the Federal Republic of Germany applies exclusively in the version applicable at the time of the conclusion of the contract. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) and inter-governmental agreements is excluded.
03. In the event of the rescission of the contract, regardless of whether due to redhibition or the exercising of the right of withdrawal for any other reason, the place of performance for all activities arising for us or the buyer from the rescission obligations is also Arnberg.

04. The German version of these general terms and conditions is the authoritative version. In the event of translation into other languages, it will take priority over the versions in another languages and was drawn up in accordance with German case law.
05. If individual provisions in these general terms and conditions should conflict in whole or in part with mandatory law or be invalid or ineffective for other reasons, the validity of the remaining provisions will not be affected.

§13 DATA PROTECTION AND DATA PROCESSING

For any information relating to the handling of user data, we refer to our separate data protection declaration (<https://www.gummivogt.de/datenschutz>).

§14 SIDE AGREEMENTS

No side agreements have been made. Amendments and additions to these general terms and conditions need to be made in writing. Any deviation from this requirement of the written form will only be valid if in writing.

§15 FINAL PROVISIONS

01. In the event of our goods being exported by our customers to areas outside of the Federal Republic of Germany, we will accept no liability if the property rights of third parties are infringed by our products. The buyer will be liable for the damage caused by the buyer due to the export of goods which were not supplied by the seller for export.
02. If the agreements concerning retention of title and accompanying contract provisions under number 5 are invalid in a foreign state due to legal reasons, the equivalent securities of the state will be considered to be agreed in place of the invalid securities. If another legal act by the parties is necessary in order for this security to be valid, the parties will rectify this.

The Management Board of A. Vogt GmbH & Co. KG:
Martin Vogt, Managing Director
Fee Vogt, Managing Director