



Vincotech

## GENERAL TERMS AND CONDITIONS OF DELIVERY

Vincotech GmbH, Bibergerstrasse 93, D-82008 Unterhaching

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### GENERAL PROVISIONS

1. These General Terms and Conditions of Delivery apply to all of Vincotech's business transactions with a Buyer which is not a consumer.
2. General Terms and Conditions of the Buyer will be rejected in their entirety.
3. The interpretation of trade terms is based on INCOTERMS 2010.
4. The Buyer is authorised to assign claims from the contracts with Vincotech only with the prior written consent of Vincotech.

### II. OFFERS

1. Offers from Vincotech are non-binding.
2. The Buyer with registered office in a member state of the European Union shall disclose its value-added tax identification number in writing upon placing an order or immediately upon request by Vincotech.
3. Unless otherwise agreed in writing, the content of the documents according to clause X.1 is non-binding.
4. A delivery contract shall become effective either upon the confirmation of Buyer's order, or upon the delivery of the ordered goods.

### III. DELIVERY

1. Prerequisite to compliance with delivery dates is the timely delivery of all documents and information to be provided by the Buyer as well as the adherence to agreed payment conditions, also regarding other transactions, as well as other Buyer obligations. If these requirements are not timely and properly fulfilled, then the delivery dates shall be reasonably extended. This does not apply if Vincotech is responsible for the delay.
2. Vincotech's delivery obligation is conditioned upon timely and proper delivery by Vincotech's suppliers.
3. Unforeseen operation interruptions, delivery delays or non-deliveries, also by suppliers, shortage of labour, power, or raw materials, strikes, lockouts, transport disruptions, official measures and cases of force majeure shall exempt the affected contract party from the obligation to deliver or accept for the duration of the disruption and to the extent of its impact. Should the disruption continue for more than one month, each party shall be entitled to rescind the contract with respect to that part of the delivery affected by the disturbance to the exclusion of all further claims.
4. Vincotech is entitled to make partial deliveries.
5. Delivery dates are met if the goods are timely handed over to the forwarding agent or carrier, or notification has been made that the goods are ready for shipment.
6. Short or excess deliveries of up to 10% of the contract amount are considered immaterial for the purposes of clause VIII.1.
7. If the Buyer has not disclosed its value-added tax identification number (clause II.2.) prior to delivery, then Vincotech is entitled to refuse delivery pending advanced payment of the German value-added tax made by the Buyer.
8. If the delivery to be made by Vincotech is delayed, then the Buyer shall set a reasonable subsequent delivery deadline. After expiration of this deadline and prior notice of refusal, the Buyer can rescind the contract. The Buyer loses the right of rescission should it not be exercised within a reasonable time period. Vincotech is obligated to pay contract penalties only where such is agreed in writing.
9. The Buyer is entitled to damage claims only in accordance with clause IX.



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#### **IV. PASSING OF RISK**

1. The risk of loss or damage to the goods to be delivered passes to the Buyer when Vincotech hands over the goods to the forwarding agent or carrier, or when Vincotech has notified the Buyer of readiness for shipment.
2. This also applies if Vincotech has taken over the costs for shipment to the destination.

#### **V. PRICES**

1. Unless otherwise agreed, Vincotech's prices are ex works, including loading but excluding packaging, freight, insurance and statutory value-added tax. Vincotech is entitled to request the immediate reimbursement of freight and other costs or expenditures.
2. Should Vincotech incur taxes, customs duties or similar expenses in the Buyer's country due to delivery to the Buyer, or should fees or other duties, particularly customs or taxes, be implemented or increased after contract conclusion, these shall be borne by the Buyer.
3. The Buyer shall bear unforeseen increased expenditures in connection with the contract execution such as in cases of force majeure or increased freight due to changed transport conditions. The same applies if contract execution is delayed for a reason within the responsibility of the Buyer (for example delayed payment, lack of cooperation in contract execution, etc.).

#### **VI. PAYMENT**

1. Unless otherwise agreed, Vincotech's invoices are to be paid net at the latest 30 days from the invoice date. Upon expiration of this period, the Buyer shall be in default.
2. Subject to their discountability, checks and bills of exchange will be accepted only based on a special agreement and only on account of performance, and subject to all costs and expenses. Credit shall be applied on the day upon which Vincotech can freely access the amount. An earlier due date in the case of Buyer payment delay remains unaffected by such.
3. If the Buyer is in default of a payment, then Vincotech is entitled to demand default interest in the statutory amount. Vincotech reserves the right to assert further damage claims.
4. Upon payment default by the Buyer, Vincotech is further entitled to declare all receivables from the entire business relationship immediately due and payable. In such case, discount agreements, reductions, price deductions, etc. are forfeited.
5. In the case of partial deliveries, an invoice will be issued for each delivery, which is to be paid according to the above conditions.
6. Should circumstance become known to Vincotech which appear to threaten its claims (recurring payment default, protested bills of exchange or cheques, foreclosure proceedings etc.), then Vincotech is entitled to refuse outstanding deliveries, also from other contracts, or to proceed with such only with prepayment or where security is given, particularly a bank guaranty. If the Buyer does not comply with a corresponding request by Vincotech within a reasonable period, then Vincotech may entirely or partially rescind the contract and/or demand damages due to non-fulfilment.
7. The Buyer is entitled to a right of retention and the authority to offset claims only to the extent that its counterclaims are recognised by Vincotech in writing or judicially determined by a final judgement.

#### **VII. RETENTION OF TITLE**

1. Delivered goods remain the property of Vincotech until the complete settlement of all claims, including future claims, from the entire business relationship with Buyer.
2. Insofar as the delivered goods are processed by the Buyer or combined with other material, Vincotech acquires the co-ownership to the manufactured new item in the relation of the invoice value of the delivered goods subject to retention of title to the invoice value of the new resulting item. The Buyer acts for Vincotech when processing, however the Buyer does not acquire any claims against Vincotech due to such processing. The Buyer is obligated to store the retained goods for Vincotech carefully and free of charge.



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3. The Buyer may resell the delivered goods which are subject to retention of title only in the usual course of business, at market price, subject to retention of title, and only for so long as he fulfils all of his payment obligations toward Vincotech when due. The Buyer is not authorised to dispose of the delivered goods subject to title retention in other ways.
4. If the Buyer resells the goods delivered by Vincotech unprocessed, the Buyer thereby assigns to Vincotech the claims ensuing to him from such sales along with all main and subsidiary rights. The assigned claims serve as security in the same scope as the delivered goods subject to retention of title.
5. The Buyer is entitled to collect claims from the resale as a fiduciary for the account of Vincotech.
6. Upon Vincotech's request, the Buyer shall promptly instruct its customer of the assignment and hand over to Vincotech the information and documents necessary for the collection. In no event is the Buyer authorised to further assign the claims.
7. The Buyer shall promptly notify Vincotech of an attachment or other impairment of goods delivered subject to retention of title.
8. If the value of the existing security exceeds the secured claims from the business relationship by more than 20% in total, then Vincotech shall be obligated upon request by the Buyer to release securities of its choice to such extent.
9. Where the Buyer behaves in a way which is contrary to the agreement, particularly payment default, Vincotech is entitled to take back the reserved goods even without rescinding the agreement, and the Buyer is obligated to surrender them. In cases of doubt, the assertion of surrender claims based on the retention of title is not deemed contract rescission.
10. Should the retention of title not be valid according to the law of the country in which the retained good is found or in which it was processed or handled, then the legal security possibility which comes closest to the retention of title comes into effect in its place.

#### **VIII. DEFECTS**

1. Vincotech shall be obligated to deliver goods which upon passing of risk, conform to the agreed specification and are free from defects in title. Failing any agreement on specification, Vincotech shall only be responsible that the delivered goods are suitable for ordinary use and exhibit specifications which are normal for goods of a similar kind and which the Buyer may expect according to the nature of goods. Immaterial deviations shall not be considered.
2. Vincotech is authorised to make constructive modifications of the goods as long as the agreed specifications or the suitability for the ordinary use is not thereby impaired.
3. The Buyer loses the right to claim a defect if he does not immediately examine the delivered goods after delivery and notify of each defect which he determined or should have determined. The type of defect should be exactly indicated in the notification. The same applies for title defects.
4. If a non immaterial material defect exists, the following apply:
  - a. As subsequent performance (= "Nacherfüllung"), the Buyer can initially request the removal of the defect within a reasonable period.
  - b. If Vincotech finally refuses the removal of the defect or if it finally fails which will be assumed after the third unsuccessful defect removal attempt, then the Buyer can request the delivery of a defect-free item against return of the defective item.
  - c. In particular, Vincotech may refuse subsequent performance in the event that this would not be possible without unreasonable cost or is not possible due to the nature of the defect.
  - d. Vincotech shall not be required to reimburse the expenditures necessary for the purpose of subsequent performance to the extent that these are increased because after passing of risk the Buyer brought the item to a place other than that which was contractually agreed, or made use of it in a way not foreseen by the contract.



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- e. If Vincotech finally refuses both types of subsequent performance or if both finally fail, which is to be assumed after more than three unsuccessful attempts, then the Buyer can rescind the contract or demand a reduction in price; the Buyer loses the right of rescission if he does not exercise it within a reasonable period.
- f. The Buyer may only claim damages subject to the conditions of clause IX.
5. Guaranties made by Vincotech require written or electronic form in order to be valid. The Buyer has the option to either assert claims from the guaranty or the defect claims according to clause VIII.
6. Unless otherwise agreed, the Buyer's defect claims expire in two years. The limitation period begins with delivery. The periods of §§ 438 para. 1 no. 2 and 634 a para. 1 no. 2 of the German Civil Code remain unaffected.

#### **IX. LIABILITY**

1. The deliverer is only liable for damages or expenditures by Buyer which are based on intentional or grossly negligent breach of duty by the deliverer or his legal representatives or vicarious agents.
2. The liability limitation of paragraph 1 does not apply for damages or expenditures from the injury to life, limb, or health.
3. The liability limitation of paragraph 1 further does not apply for damages or expenditures which are based on a material and culpable breach of essential contract duties. Except for in cases of intent and gross negligence, the liability of the deliverer is however hereby limited to damage which is typical and foreseeable by Vincotech.
4. Further, all statutorily mandatory damage claims are entirely unaffected by the liability limitation of paragraph 1.

#### **X. DOCUMENTS, CONFIDENTIALITY**

1. Documents, for example illustrations, plans, sketches, drawings, descriptions, weight, power and dimension details, calculations, etc., provided to the Buyer by Vincotech for offer submission or in connection with contract execution, are and shall remain property of Vincotech. They are to be handled in strict confidence, and may not be disclosed to third parties.
2. The Buyer shall not use the documents and information given to him for any purpose other than that foreseen in the contract. Each use other than for the purposes in the contract requires the written approval of Vincotech. The Buyer is liable for each improper or unlawful use and is also liable for its staff, employees, subsidiaries, or customers. Special confidentiality agreements prevail over this provision.

#### **XI. INDUSTRIAL PROPERTY RIGHTS, COPYRIGHTS**

1. If third parties assert justified claims against the Buyer due to infringement of industrial property rights or copyright by goods delivered by Vincotech and used as contracted, then in addition to clauses VIII and IX, the following shall apply:
  - a. As subsequent performance at its option and expense, Vincotech can either modify the delivered good so that the third party's property right is no longer infringed; obtain a licence from the property rights owner; or deliver a replacement good. If this is not possible for Vincotech under reasonable conditions and within a reasonable time period, then the Buyer is entitled to the rights according to clause VIII. 4 e.
  - b. The Buyer is entitled to damage claims only under the conditions defined in clauses VIII and IX and in the scope therein defined.
  - c. The obligations of Vincotech regulated here only apply if the Buyer notifies Vincotech without delay of the third party's asserted claims at the latest within 10 day from receipt of the property rights warning, notified in writing, does not acknowledge infringement against the third party, and allows Vincotech the discretion to take all defence measures and perform settlement negotiations.



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2. If the Buyer is responsible for the property rights infringement, then the Buyer's claims are excluded. Buyer's claims are further excluded if and to the extent that the property rights stem from a special specification of the Buyer, from usage unforeseeable by Vincotech, or because the affected good was modified by the Buyer or utilised with an good not delivered by Vincotech.

**XII. PRODUCT INFORMATION**

1. Unless otherwise agreed in writing, information from Vincotech regarding the function and use of goods apply only as general guidelines.
2. Since Vincotech's products have a wide range of use, it is incumbent upon the Buyer to thoroughly try out the goods in order to determine their suitability for the intended purpose. As a general rule, Vincotech can only support the Buyer in this case regarding application technology.

**XIII. Export Control**

Vincotech has established Export Control procedures in order to comply with national and international Export Control laws and regulations.

Vincotech's customers are requested to comply with all applicable Export Control laws and regulations and to refrain from using any goods, technologies and/or software supplied from Vincotech GmbH in relation to development, production, use or storage of weapons of mass destruction (WMD).

**XIV. PLACE OF PERFORMANCE, APPLICABLE LAW, JURISDICTION**

1. Unless otherwise agreed, the place of performance for all obligations arising out of this individual contract is the registered office of Vincotech.
2. The agreements between Vincotech and the Buyer are governed by German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
3. At the option of the respective complainant, place of jurisdiction is either Munich or the registered office of the Buyer.