

Terms and Conditions of Sale and Delivery (TCSD) of VELAN GmbH

last updated March 2007

To be used for

1. persons acting in a corporate capacity or as a self-employed person (entrepreneur) at the time of conclusion of the contract;
2. public-law legal entities or public-law special assets.

I. General

1. All deliveries and services of VELAN GmbH shall be based on these Terms and Conditions and on separately concluded contractual agreements, if any. Deviating Terms and Conditions of the customer shall not become part of the contract through acceptance of an order. Unless otherwise agreed, contracts shall be concluded upon the VELAN GmbH's written acknowledgement of order.
2. VELAN GmbH reserves title and retains copyright to all specimens, quotations, drawings and similar tangible and intangible information - also in electronic form; they may not be disclosed to third parties. VELAN GmbH undertakes to disclose information and documents of the customer marked as confidential to third parties only with the customer's consent.

Subject-matter of contract

These TCSD, the specifications given in the offer and the applicable price lists shall form an integral part of the legal transactions concluded with VELAN GmbH. Modifications of and/or amendments to the contract shall be agreed in writing. This formal requirement may only be abolished in writing.

Offer

Unless otherwise agreed in writing, offers of VELAN GmbH shall be non-binding; this shall, in particular, also apply to the prices.

Conclusion of contract - transfer of rights

The contract shall be concluded through offer and acceptance. The offer shall be accepted by VELAN GmbH by written acknowledgment of the order vis-à-vis the contracting party.

If due to the nature of the transaction a written acknowledgment of order cannot be expected, the contract shall be concluded upon actual performance (dispatching of goods, commencement of assembly, etc.).

II. Price and Payment

1. Unless otherwise agreed, our prices shall be ex works and do not include costs of loading, packaging, insurance and discharge. The prices are exclusive of applicable statutory VAT.
2. Unless otherwise agreed, payment shall be made into the account of VELAN GmbH without any deductions within 30 days of receipt of the invoice.
3. The customer shall be entitled to retain payments or set off claims with counter claims only to the extent his counterclaims are undisputed or have been ascertained by court in a non-appealable manner.
4. Cheques / bills of exchange shall exclusively be accepted on account of performance.

III. Delivery Period, Delay in Delivery

1. The delivery period shall be agreed between the parties. Observance of the delivery period on the part of VELAN GmbH shall be subject to the requirement that all commercial and technical issues have been clarified between the parties and the customer has fulfilled all his duties, such as, e.g., obtaining the necessary official certificates and permits or making down payments; otherwise the delivery period shall be reasonably extended. This shall not apply if VELAN GmbH is responsible for a delay.
2. Observance of the delivery period shall be subject to correct and timely delivery by VELAN GmbH's upstream suppliers. VELAN GmbH shall give notice of delays that become apparent as soon as possible.
3. The delivery period shall be deemed observed if the delivery item leaves the works of VELAN GmbH before the end of the delivery date or notice of readiness for delivery has been given. If acceptance of the shipment is required, the date of acceptance or, alternatively, notice of readiness for acceptance shall be decisive, except in case of a justified refusal of acceptance.
4. If dispatch and/or acceptance of the delivery item is delayed for reasons for which the customer is responsible, the resulting costs shall be invoiced to the customer after notice of readiness for delivery and/or acceptance has been given.
5. In the case that non-observance of the delivery period is due to force majeure, labour disputes or other events which are beyond VELAN GmbH's control, the delivery period shall be reasonably extended. VELAN GmbH shall inform the customer about beginning and end of such circumstances as soon as possible.
6. The customer shall be entitled to rescind the contract without notice if VELAN GmbH becomes finally unable to fulfil all its obligations under the contract before the risk passes. Furthermore, the customer may rescind the contract if performance of a part of the delivery under an order becomes impossible and he has a justified interest in refusing such partial delivery. Otherwise the customer shall pay the stipulated price for such partial delivery. The same shall apply in case of VELAN GmbH's inability. For the rest the provisions of Article VII para 2 shall apply.
If such impossibility or inability occurs during delay in acceptance or if the customer is solely or to a large extent responsible for such circumstances, he shall continue to be obliged to pay the consideration.
7. In the case of delay on the part of VELAN GmbH causing loss to the customer the customer shall be entitled to demand payment of a lump-sum compensation for the delay. Such compensation shall amount to 0.5% for each full month of delay but not more than 5% of the value of that part of the entire delivery that cannot be

used timely or according to the contract due to such delay.

If after expiration of the delivery period the customer grants VELAN GmbH a reasonable grace period for performance by taking into consideration the exceptions set forth by law and if such grace period is not observed, the customer shall be entitled to rescind the contract within the limits of the statutory provisions.

Further claims on grounds of delay in delivery shall exclusively be subject to the provisions of Article VII para 2 of these Terms and Conditions.

IV. Passing of Risk, Acceptance

1. The risk shall pass to the customer at the time the delivery item leaves the works, also if partial deliveries are made or VELAN GmbH has taken on further services, e.g., costs of shipment or delivery and assembly. To the extent acceptance is required it shall be relevant to passing of the risk. Acceptance shall be effected promptly at the date of acceptance or, alternatively, after VELAN GmbH has given notice of readiness for acceptance. The customer may not refuse acceptance in case of a minor defect.
2. In the case dispatch and/or acceptance is delayed or not effected at all due to circumstances which are not attributable to VELAN GmbH, the risk shall pass to the customer on the day notice of readiness for dispatch and/or acceptance is given. VELAN GmbH undertakes to take out insurance as required by the customer for the account of the same.
3. Partial deliveries shall be admissible to the extent they are acceptable for the customer.

V. Retention of Title

1. The goods shall remain the property of VELAN GmbH until full payment of all claims under the business relationship, including ancillary claims, claims for damages and payment of cheques and bills of exchange.
2. Retention of title shall continue if individual claims of VELAN GmbH have been included in a current account and the balance has been struck and recognised.
3. If the goods that are subject to retention of title are processed by the customer into a new movable item such processing shall be made for VELAN GmbH without imposing an obligation on the same. The new item shall become the property of VELAN GmbH. In the event of processing, combination or mingling with goods not belonging to VELAN GmbH, VELAN GmbH shall acquire co-ownership in such new item in the proportion of the invoice values of their goods that are subject to retention of title to the total value.
4. The customer shall be entitled to resell, process or integrate goods that are subject to retention of title only subject to the following provisions and only in accordance with and subject to the requirement that the claims described in paragraph 6 will actually be transferred to VELAN GmbH.
5. The customer's rights to resell, process or integrate goods that are subject to retention of title in proper business shall end upon revocation by VELAN GmbH due to default in payment, sustained deterioration of the financial situation of customer, and not later than upon suspension of payments or petitioning for and/or opening of insolvency proceedings over his assets.
6. (a) The customer hereby assigns to VELAN GmbH the accounts receivable including all ancillary rights from resale of the goods that are subject to retention of title including claims for payment of the balance due, if any, and VELAN GmbH accepts such assignment.
(b) If the goods were processed, combined or mingled and VELAN GmbH has acquired co-ownership in such goods in the amount of the invoice values, VELAN GmbH shall be entitled to the purchase price pro rata the value of their rights to the goods.
If goods that are subject to retention of title are integrated into a plot of land/building by the customer, the customer already at this point assigns the resulting claim for compensation or resulting from resale of the plot of land/building in the amount of the invoice values of the goods that are subject to retention of title with all ancillary rights including the right of being granted a collateral mortgage and VELAN GmbH accepts such assignment.
(c) In the event that the customer has sold the claim by way of non-recourse factoring the claim of the VELAN GmbH shall become immediately due and the customer shall assign to VELAN GmbH the claim vis-à-vis the factor which is replacing the initial claim and shall immediately transfer the sales proceeds to VELAN GmbH. VELAN GmbH accepts such assignment.
7. The customer shall be authorised, as long as he fulfils his payment obligations, to collect the assigned accounts receivable. Such authorisation shall end upon revocation but not later than in case of default in payment of the customer or a considerable deterioration of the financial situation of the customer. In such a case VELAN GmbH shall hereby be authorised by the customer to inform the purchasers about such assignment and to collect the accounts receivable on their own. The customer shall be obliged to surrender to VELAN GmbH, on request, a detailed list of all accounts receivable by the customer including names and addresses of the purchasers, the amounts of the individual accounts receivable, invoice dates, etc. and to provide VELAN GmbH with the information necessary for assertion of the assigned claims and allow VELAN GmbH to verify such information.
8. In the case the value of the security existing for VELAN GmbH exceeds the total amount of the accounts receivable by VELAN GmbH by more than 20%, VELAN GmbH shall be obliged to release security at their option if so requested by the customer or a third party being impaired by such excess security of VELAN GmbH.
9. Pledging or transfer of ownership by way of security of the goods that are subject to retention of title and/or the assigned accounts receivables shall not be admis-

sible. VELAN GmbH shall be immediately informed about attachments and the name of the pledgee.

10. In the case VELAN GmbH takes back the delivery item due to retention of title, the contract shall be deemed rescinded only if VELAN GmbH expressly declares such rescission. VELAN GmbH may satisfy itself by selling the goods taken back that are subject to retention of title in the open market.

11. The customer shall keep the goods that are subject to retention of title for VELAN GmbH for no consideration. He shall take out insurance against the usual risks, such as fire, theft and water damage providing customary coverage. The customer hereby assigns to VELAN GmbH the insurance claims resulting from loss or damage as aforementioned vis-à-vis insurance companies or other persons obliged to pay compensation in the amount of the invoice value of the goods. VELAN GmbH accepts such assignment.

12. Any and all claims as well as the rights under the retention of title in all those special forms as stipulated in these Terms and Conditions shall remain in effect until full release from contingent liabilities that VELAN GmbH has assumed for the customer.

VI. Warranty Claims

With respect to defects of quality and title VELAN GmbH warrants as follows subject to the provisions of Article VII and any other claims shall be excluded:

Defects of Quality

1. All parts that turn out to be defective due to a circumstance that occurred before the risk has passed shall, at the option of VELAN GmbH, be improved or replaced by them by a part that is free of defects free of charge. VELAN GmbH shall be immediately, but not later than within 7 days notified in writing if such defects are identified. A late notification shall result in a loss of rights. Replaced parts shall become the property of VELAN GmbH.

2. The customer shall consult with VELAN GmbH and give VELAN GmbH the necessary time and opportunity to carry out improvements or make substitute deliveries which VELAN GmbH considers necessary; otherwise VELAN GmbH shall be released from liability for the resulting consequences. The customer shall be entitled to repair a defect at his own or have the defect repaired by a third party only in urgent cases where the safety of the plant is put at risk and/or to defend against disproportionately large damage, whereof VELAN GmbH shall be immediately informed and required to reimburse the necessary expenses incurred.

3. With respect to the direct costs incurred for improvement and/or substitute delivery VELAN GmbH shall bear the costs of the substitute item including costs of shipment if the complaint has turned out to be justified.

4. Within the limits of the statutory regulations the customer shall be entitled to rescind the contract if the period granted to VELAN GmbH for improvement or substitute delivery on grounds of a defect in quality has fruitlessly expired, taking into account the statutory exemptions. In case of a minor defect the customer may only demand a price reduction. In all other cases the right to a reduction in the price shall be excluded. Further claims shall be subject to the provisions of Article VII para 2 of these Terms and Conditions.

5. Warranty shall, in particular, not be given in the following cases:
Inadequate or improper use, faulty assembly and/or faulty putting into operation by the customer or third parties, natural wear and tear, incorrect or negligent treatment, improper maintenance, inappropriate production facilities, insufficient construction work, unsuitable foundation soil, chemical, electrochemical or electric impacts unless VELAN GmbH is responsible.

6. In case of improper improvement by the customer or a third party VELAN GmbH shall not be liable for the resulting consequences. The same shall apply to modifications of the delivery item made without the prior consent of VELAN GmbH.

Defects of Title

7. If by using the delivery item industrial property rights and copyrights are infringed in Germany, VELAN GmbH shall, in principle, provide the customer with the right to continue using the delivery item or modify the delivery item in a way that is reasonable for the customer and ensures that such infringement of proprietary rights no longer exists.

If this is not feasible on commercially reasonable terms or within a reasonable period of time, the customer shall be entitled to rescind the contract. VELAN GmbH shall also be entitled to rescind the contract subject to the same requirements.

VELAN GmbH will, in addition, release the customer from undisputed claims or claims which have been ascertained by court in a non-appealable manner of the holder of the proprietary right concerned.

8. The obligations of VELAN GmbH set forth in Article VI para 7 shall be exhaustive with the exception of the provisions of Article VII para 2 regarding infringement of proprietary rights and copyrights.

- They shall apply only if
- the customer immediately informs VELAN GmbH about an infringement of proprietary rights or copyrights asserted,
 - the customer supports VELAN GmbH to a reasonable extent in defending themselves against claims and/or enables VELAN GmbH to carry out modification measures as defined in Article VI para 7,
 - VELAN GmbH is reserved the right to carry out all defensive measures including out-of-court settlements,
 - the defect of title is not due to an instruction of the customer and
 - the infringement was not caused by single-handed modifications of the delivery item by the customer or use of the delivery item in a way that is not in compliance with the contract.

Warranty Period

If the contractual agreement does not provide for a shorter Warranty Period, the Warranty Period shall be 12 months from date of putting into operation, but in no event longer than 18 months from the date of delivery pursuant to Article III. Para 3 first sentence.

VII. Liability

1. If the delivery item cannot be used by the customer according to the contract due to fault on the part of VELAN GmbH caused by failure to implement proposals and consultations or by improper implementation of proposals and consultations which were made prior to or after conclusion of the contract or by violation of other ancillary contractual obligations, in particular instructions on operation and maintenance of the delivery item, the provisions of Articles VI and VII para 2 shall apply accordingly and any further claims of the customer shall be excluded.

2. VELAN GmbH shall be liable, on whatsoever legal grounds, for damage which was not caused to the delivery item itself only in case of

- (a) wilful intent,
- (b) gross negligence of the owner / the corporate bodies or executive staff,
- (c) negligent injury to life and limb,
- (d) malicious withholding of information about defects or defects the absence of which was warranted,
- (e) defects of the delivery item to the extent liability for physical injuries or damage to privately used property exists according to the German Product Liability Act.

Except for cases of wilful intent or gross negligence liability of VELAN GmbH shall be limited to the value of the delivery item and in any case to one million euros. Liability for lost profit shall be excluded.

3. Exports

The contracting party acknowledges that the goods delivered by VELAN GmbH are only intended for distribution within the European Union and that special export permits may be required for exportation to other countries. VELAN GmbH shall not assume any liability for the fact that such permits will be granted. VELAN GmbH shall not assume any liability for infringement of third-party proprietary rights caused by exports to other countries. Direct or indirect exportation of products of VELAN GmbH to countries not belonging to the European Union or the European Economic Area (third countries) shall require the express consent of VELAN GmbH. The contracting party shall indemnify and hold VELAN GmbH harmless for claims asserted as a consequence of export to third countries.

Any further claims shall be excluded.

VIII. Limitation of Claims

All claims of the customer based on whatsoever legal ground shall become time-barred after 12 months. Claims for damages as set forth in Article VII para 2 (a) to (e) shall be subject to statutory periods. Such statutory periods shall also apply to defects of a building or to delivery items which - in line with their customary usage - have been used in the construction of a building and have led to defectiveness of the same.

IX. Use of Software

To the extent the scope of delivery contains software the customer shall be granted a non-exclusive right to use the delivered software including documentation. The software is made available for use on the designated delivery item. Use of the software on more than one system shall be prohibited.

The customer may reproduce, reengineer or translate the software or translate it from object code into source code only to the extent permitted by law (Sections 69a ff German Copyright Act [Urhebergesetz - UrhG]). The customer undertakes not to remove manufacturer information, in particular copyright notes, and not to alter them without the express prior consent of VELAN GmbH.

All other rights to the software and documentation including copies shall remain with VELAN GmbH and/or the supplier of the software. The granting of sub-licences shall not be admissible.

X. Severability Clause

If any provision of this Agreement shall be or become in total or in parts invalid, the validity of the remaining provisions of this Agreement shall not be affected. The parties undertake to replace the invalid provision by agreeing on a new, legally valid provision, which is closely as possibly mirrors the economic purpose of the invalid provision.

XI. Applicable Law, Place of Jurisdiction

1. The law of the Federal Republic of Germany applicable to legal relationships between national parties shall exclusively apply to all legal relationships between VELAN GmbH and the customer and the UN Convention on Contracts for the International Sale of Goods and the conflict of laws rules of private international law shall be excluded.

2. The exclusive legal venue shall be the court having jurisdiction over the registered office of VELAN GmbH. If the registered office of the customer is outside the European Union, all disputes arising out of this contract or referring to breach, dissolution or nullity of the same shall be finally settled according to the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC Paris) by three arbitrators appointed according to the said Rules. The place of arbitration shall be Vienna/Austria. However, VELAN GmbH shall in each case be entitled to file suit at the place of the registered office or place of establishment of the customer.