

## Terms and Conditions of Sale and Delivery

(Status: October 2018)

### § 1 Deliveries and Services

- 1.1 **We shall not be bound by a customer's conditions of purchase.** Only our terms of sale and payment shall be effective; on placing an order the customer declares his agreement to be bound by these conditions. The customer shall also be bound by these conditions in future dealings even if they are not explicitly referred to but have been received by the customer on acceptance by us of an order. If an order is placed that does not comply with our terms of sale and payment, then our terms of sale and payment shall remain solely valid even if we have not contradicted the customer's terms. Thus any deviations shall only be effective if they have been explicitly approved by us in writing.
- 1.2 **Quotations, sales contract.** All offers and quotations made by our company are at all times subject to change without notice. All conclusions of sale and agreements shall not be binding unless confirmed by us in writing. The written confirmation of order will be replaced by the invoice if the order is carried out immediately.
- 1.3 **Change of model or design.** If a business transaction involves sales or services that can be technically developed to a higher standard, then we are entitled to deliver the most recent model in each case, unless the customer expressly wishes to receive only the ordered model/article. If such a case should arise, then the customer is only entitled to withdraw from the contract if he is able to prove that he is no longer interested in the purchase as a result of the change of model.
- 1.4 **Guaranteed quality.** The statements and details in our brochures, lists of designs and models, catalogues, data sheets and other advertising leaflets, in specifications, performance specifications and other technical conditions of sale, in certificates (e.g. certificate of compliance) and other forms do not constitute a warranty of quality beyond the guarantee defined under section 459, subsection 2 of the German Civil Code. Such warranty of quality must be confirmed in writing separately by the management of our company in order to be effective; the guarantee must be clearly specified as such.
- 1.5 **Samples.** If we provide a customer with samples, then these shall be deemed prototypes and not as samples/specimens in the sense of § 494 of the German Civil Code. Sample deliveries will be invoiced at the usual market prices.
- 1.6 **Cancellation of orders.** We are not obliged to accept cancellations (withdrawal, termination etc.) of orders by customers. At all events written confirmation from us will be required. Any costs incurred including lost profits will be charged in full.
- 1.7 **Part delivery.** Every part delivery shall be deemed an independent transaction.

### § 2 Price

- 2.1 The **prices** exclude packaging for delivery ex works Kaufbeuren, plus value-added tax.
- 2.2 **Cost adjustment.** In the event of changes in costs for labour and materials at the time of delivery, we reserve the right to adjust formerly agreed prices. If the products that are the subject matter of the contract contain any precious metal, or other materials that are subject to sudden fluctuations in prices, then there is no time limit on cost adjustment. In all other cases cost adjustment is permissible if the time between the date of our acceptance of order and the agreed date of delivery is at least 4 months.
- 2.3 **Government contracts.** If the transaction is subject to the "VOPR 30/53" (regulation governing prices for government contracts), then the following shall apply: Our prices are current market prices as defined under §4 VOPR 30/53. The agreed price will be replaced by a cost price if the relevant administrative office determines with legal validity that price assessment as defined under §§ 3 and 4 VOPR 30/53 is not possible. Determination of the cost price is to be based on the cost trend at the time of the relevant delivery. If the agreed price is to be the maximum price, then it shall be the price adjusted according to the cost trend as laid down in the cost adjustment clause (§2.2).

### § 3 Turnover Tax-The European Single Market Act Intra-Community Trade (Sales Tax Identification Number) from 01.01.1993

- 3.1 The customer guarantees the **accuracy of information given** regarding his name, address, and sales tax identification number that he should forward to us immediately, without further request, if he has not already done so. He is obliged to inform us, as well as his domestic tax office, immediately of any change of name, address or sales tax identification number. If a delivery is treated as being subject to taxation as a result of an error in the name, address or sales tax identification number, then the customer is to reimburse the resulting tax costs incurred by us.
- 3.2 In the event of **double taxation** – purchase tax in the importing country, turnover tax in Germany – then the customer shall pay back to us the turnover tax paid (because it is not due on account of the liability for purchase tax).

### § 4 Reservation of Ownership

- 4.1 **Simple reservation of ownership.** The vendor may retain ownership of the delivered goods until the purchase price has been paid in full.
- 4.2 **Extended reservation of ownership.** If our reservation of ownership applies to goods that become inseparably linked to, or mixed with, other objects, then we shall be joint owner of the new object. Debt outstanding as a result of resale of such goods, to which the vendor retains title until the purchase price has been paid, is hereby assigned to us if sold together with other goods to the invoiced value of our goods under the conditional sale agreement.
- 4.3 **Deterioration of assets.** If the financial position of the customer should deteriorate (§4.2), then we are entitled to bar the resale or further processing of the goods delivered under the terms of the reservation of ownership clause, and demand the goods be returned at the customer's cost.
- 4.4 **Current account reservation.** We reserve our title to the delivered goods, which may only be sold in the ordinary course of correct business transactions, until all claims arising from the business connection, including any possible refinancing or acceptor's bills, have been paid in full.

### § 5 Terms of Payment

- 5.1 **Payment** is to be effected within 30 days of invoice date without discount. The acceptance of bills of exchange and cheques in payment will incur additional expenses for the customer. If the dates of payments are not met, we reserve the right to charge interest on arrears (without the necessity of a request for payment being sent beforehand); the interest rate shall be 3% above the current discount rate.
- 5.2 **Payable immediately.** If the purchaser is in arrears with any payments owing to us, then all existing outstanding debts will be due immediately.
- 5.3 **Payment** All payments are to be made solely to VIANOVA Technologies GmbH, Manfred-von-Ardenne-Ring 20, 01099 Dresden, for settlement of debt.
- 5.4 We are entitled to assign any claims arising from our business relations.

### § 6 Dispatch

- § 6.1 **Goods will be dispatched** for the account and at the risk of the receiver.

§ 6.2 **Complaints.** Any complaints or notices of defect are to be made in writing within 8 days of receiving the goods.

## § 7 **Transport Insurance**

7.1 **Conclusion of an insurance contract.** All products will only be insured by us at the customer's request and at his expense.

7.2 **The customer's duties in case of damage.** In order to safeguard the rights based on the insurance contract concluded by us, it is the customer's duty to act as follows:

The goods are to be checked immediately upon delivery by the freight carrier. The customer is to check whether the delivery is complete and whether the goods are in proper condition. If parts of the delivery are missing or if damage or other circumstances indicate damage or loss in transit, this is to be noted on the delivery receipt. If damage in transit is noticed after the goods have been handed over by the freight carrier, then the freight carrier is to be notified in writing immediately; the following deadlines for complaint are to be observed (calculated from the date of delivery):

- dispatch by post	24 hours
- transport by haulage company	4 days
- road, rail or air transport	7 days

## § 8 **Liability for Defects**

8.1 **Principle.** We guarantee that the features of our products are in keeping with the product characteristics shown in our relevant publications (catalogues, data sheets, specifications), or with those agreed to in specific cases. We cannot assume responsibility for the use of the goods as intended by the customer, even if we have given advice on the matter. This stipulation shall also apply to any changes or modifications to the goods and their specifications. Samples are not relevant as regards the scope of our guarantee. Product liability for articles and software merely marketed by us but produced by another manufacturer is excluded.

8.2 **Data loss.** In the event of loss of data, VIANOVA is only liable for the outlay incurred for the recovery of lost data, and under the condition that the customer stored the data each day in a computer-readable form. Claims under the product liability law and arising from the absence of the guaranteed quality of the article sold remain unaffected.

8.3 **Receiving inspection. Notice of defect in quality.** The provisions of §377 of the German Commercial Code apply to the customer, regardless of whether or not he is by legal definition a businessman: to safeguard warranty claims it is, in particular, his duty to conduct a receiving inspection and to give written notification immediately of any defects or quantity deviations found. Merely returning the goods shall not be deemed notification of defects and does not release the customer from his obligation to pay the purchase price.

8.4 **Warranty.** If a notice of defect in quality is justified we reserve the right to choose between provision of replacement or a refund credit slip for the customer. Any further claims, in particular to reimbursement of installation charges and dismantlement costs, to compensation for damage, any liability for consequential damage, and claims to cancellation of sale or reduction of purchase price shall not be recognized.

8.5 **Operating life time.** Any information in our publications regarding the service life of our products is strictly based on statistical values; they serve as a guideline to our customers and are published according to the best of our knowledge and belief; they are, however, not in any way binding.

## § 9 **Protective Rights**

9.1 Any documents / paperwork may only be copied and made available to third parties with our written consent (§7 subsection 1 of the Patent Act or §5, subsection 4 of the Utility Model Act).

9.2 Any duplication or reproduction of software on data carriers or in the form of documents / paperwork is not permitted without written consent (exception: for the purpose of data protection for the purchased system).

9.3 Standard software and other software products from third party companies that are marketed by VIANOVA shall only be made available under the license conditions of the third-party company. License rights are granted in the name of and on behalf of the third-party company. VIANOVA guarantees that they are entitled to market the products.

9.4 If copyrights, and/or trademark rights, proprietary rights, rights to samples/designs, labels or other protective rights are infringed due to the production and/or delivery of the ordered goods, or through the duplication of the data carriers and software supplied, and if these infringements were caused by instructions or requests given by the customer or his legal representative or vicarious agent, then the customer shall be obliged to release VIANOVA from all claims by infringing parties.

## § 10 **Data Protection**

10.1 Any data acquired in the course of our business relationship regarding business contacts, will be kept on file with our company and, if applicable, with affiliated companies, as well as with suppliers.

## § 11 **Export Control**

11.1 All products supplied by us are intended to remain in the country of delivery that was agreed upon with the customer. The customer is aware that re-export of products is subject to the foreign trade legislation in Germany and the country of origin, and may be subject to approval. It is the customer's duty to obtain information regarding these regulations and to apply for the relevant approval if required. Further, the customer undertakes to require all recipients of such products or technical information purchased from our company to commit themselves similarly, and he is to inform them of the necessity of compliance with the statutory regulations.

## § 12 **Court of Jurisdiction**

§ 12.1. The court of jurisdiction shall be Dresden, Germany.

§ 12.2. The contractual relationship is solely subject to German law, in particular the German Civil Code and the German Commercial Code.

## § 13 **Severability Clause**

§ 13.1. Should any individual provision of this contract be or become void, the validity of the remaining provisions hereof shall in no way be affected.