

Section 1 General – Scope

(1) These conditions apply exclusively for all orders of trade products of companies of the Vossloh-Schwabe group.

(2) Trade products are products which are being supplied by third parties and which we further market at the most with minor modifications under our name.

(3) Our purchasing conditions apply exclusively; we shall not admit any conditions of the Supplier that contradict or deviate from our purchasing conditions unless we had accepted their validity in writing. Our purchasing conditions also apply if we accept a delivery from the Supplier without reservation while we are aware of any conditions of the Supplier that contradict or deviate from our purchasing conditions.

(4) All agreements that are made between us and the supplier for the purposes of executing this Agreement shall be recorded in writing in this Agreement.

(5) Our purchasing conditions shall only apply to companies in accordance with Section 310 Para. 1 BGB.

Section 2 Tender – Tender documents

(1) The Supplier is obliged to accept our order within a period of two weeks.

(2) We retain the ownership and copyrights to illustrations, drawings, calculations and other documents; these documents must not be made accessible to third parties without our explicit written consent. These documents are exclusively for use for production on the basis of our orders; after processing the order these documents shall be kept secret. In this respect the regulation of Section 9 Paragraph 5 applies in addition.

Section 3 Prices – Payment conditions

(1) The price shown in the order is binding. In the absence of any deviating written agreement the price includes delivery "carriage paid" including packaging. The return of packaging requires a separate agreement.

(2) Statutory value added tax is included in the price.

(3) We can only process invoices if these – corresponding with the directions in our order – provide the order number shown in the order; the Supplier is responsible for all the consequences in the event of non-compliance with this obligation insofar as the Supplier does not verify that they were not responsible for this.

(4) Insofar as nothing is agreed to the contrary we shall pay the purchase price within 14 days calculated from delivery and the receipt of the invoice with a 2% discount or net within 30 days after the receipt of the invoice.

(5) We shall be entitled to statutory offset rights and rights of lien.

Section 4 Delivery time

(1) The delivery time shown in the order is binding.

(2) The Supplier shall inform us immediately in writing (or by email) if circumstances occur or are recognisable to the Supplier from which it arises that compliance with the delivery time stipulated is not possible.

(3) In the event of a delay in delivery we shall be entitled to statutory claims. We are entitled in particular after the ineffectual expiry of an appropriate deadline to demand compensation instead of the performance and withdrawal. If we demand compensation the Supplier shall be entitled to prove to us that the Supplier was not responsible for the breach of obligation.

Section 5 Transfer of risks – Documents

(1) Insofar as nothing to the contrary is agreed in writing delivery shall be made carriage paid.

(2) The Supplier is obliged to provide our order number exactly on all shipping papers and delivery notes; if the Supplier fails to do this any delays that occur in processing shall not be our responsibility.

(3) Risks shall be transferred on acceptance of the merchandise by VS.

Section 6 Inspecting for defects – Liability for defects

(1) We are obliged to check the merchandise within an appropriate period for any quality or quantity deviations; any objections shall be timely if they are received at the Supplier within a period of 5 working days calculated from the receipt of the merchandise or in the event of hidden defects on discovery.

(2) We shall be entitled to statutory claims in full in the event of defects; in every case we shall be entitled to demand from the Supplier rectification of the defect or delivery of a new item at our choice. The right to compensation in particular instead of performance remains reserved.

(3) We are entitled to carry out the rectification of defects ourselves at the cost of the Supplier if the Supplier is in default.

(4) The period of limitations is 36 months calculated from the transfer of risks if the mandatory provisions of Sections 478, 479 BGB do not apply.

Section 7 Product liability – Indemnity – Third party liability insurance cover

(1) Insofar as the Supplier is responsible for product damage the Supplier shall indemnify us from third party claims to compensation on the first request insofar as the cause is in the domain and organisational area of the Supplier and the Supplier is itself responsible in its external relations.

(2) Within the scope for claims in accordance with Paragraph 1 the Supplier is also obliged to refund any expenses in accordance with Sections 830, 840, 426 BGB that arise from or in connection with a recall action carried out by us. We shall inform the Supplier about the content and extent of recall measures to be carried out – insofar as this is possible and reasonable – and shall give the Supplier the opportunity to make a statement. Any other statutory claims remain unaffected.

(3) The Supplier is obliged to take out product liability insurance with an amount insured of at least EUR 10 million all-inclusive for personal injury/damage to property; if we are entitled to any claims to compensation beyond this amount these shall remain unaffected.

Section 8 Intellectual property rights

(1) The Supplier guarantees that no third party rights within the Federal Republic of Germany have been breached in connection with its delivery. Such rights include in particular intellectual property rights such as patents, utility models or industrial designs.

(2) If a claim is made against us by a third party in this respect the Supplier is obliged to indemnify us from these claims at the first request; we are not entitled to make any agreements with the third party – without the consent of the Supplier – in particular to reach any settlement.

(3) The obligation of the Supplier to indemnify relates to all expenses that necessarily emerge from or in connection with the claims by a third party.

(4) The period of limitations is 36 months calculated from the transfer of risks.

Section 9 Reservation of title – Provision – Tools – Secrecy

(1) If we provide parts at the Supplier we shall retain ownership of such items. Any processing or alteration by the Supplier shall be carried out for us. If our merchandise subject to reservation of title is processed with other objects that do not belong to us we shall acquire co-ownership to the new item in relation to the value of our item (purchase price plus VAT) to the other processed items at the time of processing.

(2) If the items provided by us are inseparably mixed with objects that do not belong to us we shall acquire co-ownership of the new item in relation to the value of our item subject to reservation of title (purchase price plus VAT) to the other processed items at the time of processing. If mixing is done in a manner that the item of the Supplier is to be seen as the main item it is deemed to be agreed that the Supplier shall transfer pro rata co-ownership to us; the Supplier shall keep the property in sole ownership or joint ownership in safe custody for us.

(3) We retain ownership of tools; further the Supplier is obliged to use the tools exclusively for the manufacture of the merchandise ordered by us. The Supplier is obliged to insure the tools that belong to us at their new value at the cost of the Supplier against fire and water damage and against theft. Simultaneously the Supplier now assigns to us all claims to compensation from this insurance; we hereby accept the assignment. The Supplier is obliged to carry out any maintenance or servicing work required on our tools and any repairs or reconditioning work at its own cost and in good time. The Supplier shall immediately inform us of any faults; if the Supplier culpably neglects to do so any claims to compensation shall remain unaffected.

(4) If any liens to the purchase price to which we are entitled in accordance with Paragraph 1 and/or Paragraph 2 exceed all our not yet paid merchandise subject to reservation of title we shall be obliged to indemnify the liens at our discretion on the demand of the Supplier.

(5) The Supplier is obliged to keep all illustrations, drawings, calculations and other documents and information strictly secret. These may only be disclosed to third parties with our explicit consent. The obligation to secrecy also applies after the execution of this Agreement; this obligation expires if and insofar as the production knowledge in the illustrations, drawings, calculations and other documents assigned becomes generally known.

Section 10 Offset

(1) The Supplier is only entitled to offset with counterclaims or exercise a right of retention if and insofar the counterclaims are ascertained to be undisputed or unappealable.

Section 11 Court of jurisdiction – Place of performance

(2) If the Supplier is a business our place of business shall be the court of jurisdiction; we are however entitled also to file a suit against the Supplier at the court of its domicile.

(3) If nothing to the contrary arises from the order our place of business is the place of performance.

(3) This Agreement is subject to German law. Any amendments to this Agreement must be made in writing.