



General Terms and Conditions of V&C Kathodischer Korrosionsschutz Ges.m.b.H. (in the following referred to as “V&C”)

I. Scope and General Provisions

Any delivery of goods, supply of services or offer by V&C to an entrepreneur within the meaning of the Consumer Protection Act (*Konsumentenschutzgesetz*, “KSchG”) shall exclusively occur pursuant to these General Terms and Conditions (“GTC”). Any agreement that derogates from or amends these GTC must be made in writing or otherwise shall be null and void.

Silence or other inactivity on the part of V&C or acts in performance of the contract by V&C shall not be deemed as consent to provisions derogating from these GTC. Consent to derogating provisions shall not exclude the applicability of those provisions of these GTC which are not in contradiction with the derogating provisions accepted by V&C.

II. Parties to the Contract

V&C enters into contracts on basis of these GTC exclusively with parties (“Customers”) that are entrepreneurs within the meaning of the KSchG. By entering into a contract with V&C on basis of these GTC, the Customer confirms to be an entrepreneur (and not a consumer, i.e. Verbraucher) in accordance with the KSchG. Provisions of the KSchG that only apply to non-entrepreneurs, e.g. those regarding contracts concluded by distance marketing, are therefore not applicable to contracts between V&C and its Customers.

III. Offers and Conclusion of Contract

Contracts between V&C and the Customer shall be concluded through the Customer’s acceptance of a written offer made by V&C. Offers made by V&C are binding for a period of 10 days from the date of the offer, unless otherwise provided in the offer; after this time V&C is no longer bound by this offer. If the Customer submits an offer, such offer requires written acceptance by V&C; the Customer shall be bound by the offer during a reasonable period of time, but at least 8 days from the receipt of the offer by V&C. Faxes and e-mails are sufficient for fulfilling the requirement of writing. Contracts with a purchase value of less than € 2.500,00 may be concluded without a prior written offer on the basis of a written or oral (also by phone) Customer’s order. In this case the contract is concluded at the latest by delivery of the ordered goods through V&C. Side agreements, amendments and changes to a contract shall always require the written form; this provision does also apply where the parties seek to derogate from the written-form requirement.

V&C shall be entitled to demand an appropriate down-payment and make its payment a condition for the performance of the contract.

IV. Prices

All prices quoted by V&C, unless explicitly stated otherwise, are in Euros not including statutory VAT and are ex works at 3031 Pressbaum (Incoterm-clause “EXW”) Fees of any kind, public taxes and custom duties shall be paid by the Customer. If performance by delivery has been agreed, the transport costs shall be charged separately. The transport risk shall be borne by the Customer; transport insurance shall only be concluded upon the request and on the account of the Customer.

In the event that an order differs from the offer, V&C reserves the right to appropriately modify the price.

In the case of contracts the performance of which extends over more than one year, V&C shall be entitled to raise prices appropriately after each 12 months in the event that (i) the cost of labour rise due to industry-wide collective bargaining agreements or to internal collective agreements or (ii) other costs required for the performance, like material, energy, transport, third party labour, financing etc, rise.



V. Delivery Periods and Dates

Unless a delivery date is agreed as “fixed”, delivery periods shall be without obligation.

In case of contractually fixed delivery periods V&C shall be in default only after the expiry of an appropriate period of grace set by the Customer.

If the beginning of the performance or the performance itself is delayed and if the delay is not caused by circumstances for which V&C is responsible, the dates and periods contractually agreed as binding, including the “guaranteed” or “fixed”, shall also be appropriately postponed. The extra costs caused by the delay shall be borne by the Customer unless V&C is responsible for the circumstances which caused the delay.

Should the Customer not remove the circumstances which caused the delay pursuant to the paragraph above within an appropriate time set by V&C, V&C shall be entitled to use otherwise the material and equipment which it already procured for the performance of the services; in the event that the performance of the services is continues, any periods and dates shall be extended by the time required for obtaining that otherwise used equipment and material.

VI. Performance of Services

V&C shall be obliged to perform its services at the earliest after all technical and contractual details have been clarified and the Customer has fulfilled the prior obligations as well as created the constructional, technical and legal conditions for the performance of the services.

The required third party permissions, in particular by authorities and energy service providers must be obtained by the Customer; V&C shall be authorised to bring about the making of the required notices to authorities at the costs of the Customer.

The Customer must provide, at no costs, for the time of the performance of the services suitable rooms for the secure storage of equipment and material as well as the sanitary facilities for the personnel.

The energy, water and compressed air required for the performance of the services and trial operations, must be provided by the Customer at no costs.

If the order must be carried out urgently according to its nature or if the urgent performance is desired by the Customer, and if that was not known at the time of the conclusion of the contract, the extra costs, like overtime premiums, costs for the fast procurement of material and the like, shall be charged additionally.

Costs for the environmentally compatible and legally required waste disposal, which are caused by services of V&C, are not included in the scope of services and will be charged separately.

VII. Minor Changes of Services

Minor or other changes of the service and delivery obligations of V&C the acceptance of which by the Customer can reasonably be expected (zumutbare Änderungen) shall be deemed to be approved in advance. This applies in particular to modifications caused by circumstances (e.g. in case of form, size, colour etc).

VIII. Passing of the Risk of Loss

In case of deliveries the risk of loss shall pass to the Customer upon the delivery of the goods to the carrier or when the goods have left the storage location of V&C. Should dispatch be delayed for reasons attributable to the Customer or should the Customer not entrust V&C with the dispatch of the goods, the risk of loss shall pass to the Customer upon the notification of readiness for dispatch to the Customer. In case of other services the risk shall pass to the Customer upon the completion of the service or if partial services have been contractually agreed upon the completion of each partial service.



IX. Reservation of Title

The Customers of V&C expressly agree that all deliveries of goods are made with reservation of title until full payment of the outstanding invoice. Therefore, all goods delivered remain in the unrestricted ownership of V&C until full payment.

Invoking the reservation of title shall not be deemed a withdrawal of contract unless the withdrawal is expressly declared. If goods are taken back, V&C shall have the right to charge incurred transport and handling expenses. If a third party seizes any goods under reservation of title – in particular by levying execution – the Customer shall be obliged to call attention to the ownership of V&C and to inform V&C immediately. If the Customer is not a commercial distributor, he must not dispose of the goods under reservation of title until full payment of the purchase price, and in particular, must not sell, pledge, gift or lend them. The Customer bears the full risk for the goods under reservation of title, in particular the risk of loss, damage or impairment.

If the Customer sells goods delivered with reservation of title as a commercial distributor or in breach of the above provisions before full payment, the Customer must call the attention of its purchaser to the reservation of title. Furthermore, the Customer already now assigns to V&C its claims against third parties, to the extent that such claims arise from the sale or manufacturing of the goods delivered by V&C, until the full payment of all the claims of V&C towards the Customer in lieu of payment. The Customer shall name its purchasers on V&C's demand and give them timely notice of the assignment. The assignment shall be recorded in the books of the Customer, in particular the open item list, and must be disclosed to the purchaser on delivery notes, invoices etc. If the Customer is in default with a payment, its sale proceeds must be kept separate and held by the Customer solely on behalf of V&C. Upon the conclusion of the contract, any claims against an insurer shall already be assigned to V&C within the limits of section 15 insurance contract law (Versicherungsvertragsgesetz).

X. Terms of payment, Late Interest, Costs for the Collection of Late Payments

Unless agreed otherwise, all deliveries and services of V&C shall be paid within 30 days after invoicing without any deduction. An invoice shall be deemed to be accepted, if the Customer does not object in writing within 14 days.

In case of a default of payment the statutory interest rate pursuant to section 352 UGB of eight percentage points above the base rate shall be charged. Furthermore, any cash discount agreements shall expire; this also applies to default with any partial payment if partial payments have been contractually agreed. A payment is credited to the oldest outstanding claim.

For simple reminders V&C charges handling costs of EUR 8.0. The necessary costs of measures of the extrajudicial and judicial collection and enforcement shall be borne by the Customer pursuant to the actual amount.

In case of a default of payment V&C shall be entitled to postpone further contractual services until the full payment, which, however, does not release the Customer from its payment obligation.

XI. Warranties; Examination Duty and Notice of Non-Conformity

The goods must be examined after delivery without delay by the Customer, at any case within 10 working days at the latest. Notice of any defects discovered must be given in writing without delay, at any case within three working days after their discovery at the latest, by indicating the type and extent of the defect. Notice of hidden defects must be given in writing without delay, at any case within three working days after their discovery at the latest. If a notice of non-conformity has not or not timely been given the goods are deemed to be approved.

In case of new goods as well as work deliveries and work performances the guarantee period shall be 12 months. In case of repaired goods the guarantee period shall be 6 months for the renewed equipment or component part.



The guarantee period commences on the time of the passing of risk.

In case of a defect, the Customer may initially only demand repair or exchange of the defective goods within reasonable time. In case of minor defects V&C at its option is entitled, but not obliged, to desist from an exchange or repair, but instead grant an appropriate price reduction, in particular when an exchange or repair would cause disproportionate expenses. Should a repair or exchange not be possible or cause disproportionate expenses, the Customer shall have the right for a price reduction or annulment. A right of the Customer for a price reduction in case of minor defects or, if the defect is not minor, for annulment shall only exist when V&C either rejects a repair or exchange or does not carry it out within reasonable time, which, however, shall never be less than 14 working days.

V&C is not liable for defects and damages caused by faulty handling, abnormal operating and positioning conditions as well as transport damages. For deliveries and services of V&C which were afterwards modified by the Customer without authorisation or damages caused by faulty maintenance, the guarantee shall not apply.

XII. Liability, Product Liability and Compensation

V&C shall be liable, except in case of injury to persons, only for intention and gross negligence within the framework of statutory provisions; the contractual and tortious liability shall be reduced to the statutory minimum. Except in case of injury to persons, any liability for light negligence as well as compensation for consequential loss, pecuniary loss, interest loss and compensation for claims of third parties against the Customer shall, thus, be excluded. The amount of the compensation obligation of V&C shall be limited to the value of the order.

XIII. Termination of the Contract

V&C shall have the right to terminate the contract with immediate effect or interrupt its services in the event that:

- the Customer, or persons attributable to the Customer, makes it unbearable for V&C to maintain the contractual relationship;
- the Customer violates these GTC or other material provisions of the contract;
- the Customer gives false information at the conclusion of the contract;
- the Customer is fully or in part in default with a payment due despite a reminder made in writing or electronically and the setting of a grace period of 10 working days;
- bankruptcy or judicial composition proceedings have been filed against the patrimony of the Customer or the conditions for the opening of insolvency proceedings have been fulfilled, but an application for the opening of insolvency proceedings has not been made or dismissed because of lack of property;
- the Customer does not fulfil material obligations of the concluded contract.

In the case of a termination of the contract V&C has the right to charge the costs actually incurred and loss of profit.

XIV. Force Majeure

Force majeure or other unforeseeable obstacles in the sphere of influence of V&C or its sub-distributors shall release V&C from the obligation of performance and the adherence to the agreed delivery time.

Force majeure is deemed to be any unforeseeable event as well as any event, for the effects of which on the performance of the contract no party is liable. Such events are in particular disruptions of operation of any kind, labour conflicts, also with regard to third party facilities, measures and restrictions by authorities, war events and effects, traffic blocks, natural phenomena of particular intensity (avalanches, inundations etc), terrorism, electrical power blackouts, virus contamination.

In such cases the Customer shall have no compensation or other claim.

In case of contracts for delivery by a fixed date, V&C may terminate the contract. Upon termination of the contract all mutual rights, obligations and claims shall end.



XV. Intellectual Property Rights, Confidentiality and Protection of Concepts and Documents

Concepts, drafts and other technical material of V&C as well as samples, catalogues, prospectuses, illustrations and the like shall always remain the intellectual property of V&C; the Customer shall not obtain thereof any rights of usage. He shall be obliged to keep confidential such concepts, drafts or other technical material and not distribute them to third parties.

Any use, in particular the distribution, copying, publication or provision, including the copying of excerpts, shall require our express consent. All documents referred to above may be reclaimed by us at any time and must be returned to us immediately without separate demand if the contract is not entered into.

XVI. Severability

The invalidity, ineffectiveness or unenforceability of a provision of these GTC or of provisions of the contract between V&C and the Customer shall not affect the validity of the other provisions. Such defective provisions shall be deemed to be replaced by valid, effective and enforceable provisions which come nearest to the economic and legal implications which the parties expected from the defective provision.

XVII. Governing Law, Place of Venue

This contractual relationship shall be exclusively governed by Austrian law, excluding Austrian conflict-of-law provisions. The application of the UN contract law shall be excluded. The place of venue shall be the competent court in 3100 St. Pölten.

XVIII. Data Protection, Change of Address

The Customer agrees that V&C may store and process all personal data contained in business correspondences or a contract by means of electronic data processing. The data will be used for purposes of accounting and contract performance and shall not be disclosed to third parties, unless this is necessary in order to fulfil the contract, in which case third parties to which the data is disclosed will be responsible for observing the Data Protection Act.

V&C shall be entitled to include projects which are realised by it in the reference list of the undertaking.

The Customer shall notify us of any change of its (business) address and e-mail address as long as the legal relationship which is the subject matter of the contract has not been fully performed by both parties. If the notification is not given, the Customer shall be deemed to have received a declaration if it is sent to the last known address.

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Legal Form: Limited Liability Company (Gesellschaft mit beschränkter Haftung) pursuant to Austrian Law

Seat: Pressbaum

Companies Register: Country Court St. Pölten

Registration Number: FN 123815g