

# General conditions of sale of Van Beest GmbH

Version: 1 January 2019

## Article 1 Definitions

In these general conditions of sale, the meaning of the following terms are outlined below:

- Van Beest Van Beest GmbH, Industriestraße 9, 59457 Werl, Germany
- Customer Business operation within the meaning of § 14 of the German Civil Code, holding the contact with Van Beest about a (possible) agreement with Van Beest;
- Order Any order for the supply of products, which the customer has placed with Van Beest;
- Agreement The agreement between van Beest and the customer with respect to the delivery of products;
- Product(s) Product(s) which Van Beest has sold and delivered to the customer or which has/have been negotiated between Van Beest and the customer regarding their sale/delivery.
- Parties Van Beest and the customer;
- Terms and conditions The present general terms of delivery

## Article 2 General

- 2.1 These terms and conditions apply to all legal relationships with Van Beest as the (potential) seller or supplier of the products, including all offers by Van Beest relating to products, orders and the acceptance of orders, as well as to all deliveries and services by Van Beest.
- 2.2 The applicability of the general terms and conditions of the customer is hereby expressly excluded and rejected by Van Beest. The customer's general terms and conditions shall not apply, even if Van Beest does not contradict their validity in an individual case. Even if referring to a letter that contains or refers to the terms and conditions of the customer or a third party, Van Beest shall not consent to the validity of those terms and conditions.
- 2.3 If the content of the agreement contradicts the terms and conditions, the provisions of the agreement shall prevail.
- 2.4 The customer is not entitled to assign the agreement or the resulting rights or obligations to any third party without the express, prior and written consent of Van Beest. Van Beest is entitled to transfer its own rights and obligations under the agreement to a third party. In this respect, the customer hereby grants consent with effect for the present and the future.
- 2.5 As far as the written form is provided in these general terms and conditions for the submission of declarations, the telecommunication transmission, in particular by fax or e-mail, shall suffice, provided that the copy of the signed declaration is delivered.

## Article 3 Offers and conclusion of the agreement

- 3.1 All offers of any form, provided by or on behalf of van Beest, are without engagement, unless they are expressly marked as binding or contain a specific acceptance period. By accepting a non-binding offer made by Van Beest, the contract shall be concluded if the contract is not immediately rejected by Van Beest.
- 3.2 If the offer stipulates an acceptance period, the offer can be accepted only within this period.
- 3.3 An agreement comes into force only after the customer has accepted the offer in writing and Van Beest has confirmed the acceptance of the customer in writing or has begun the execution of the agreement.
- 3.4 All drawings, calculations, plans, systems, templates and forms, methods and other data shall remain the property of van Beest, and may not be passed on to third parties without the prior written consent of Van Beest.
- 3.5 The prices quoted by Van Beest based on the fixed price criteria that apply at the time of the offer, including the public charges and wages, which are calculated according to the usual working hours at Van Beest. If one or more of these cost price factors will change - including changes that are due to exchange rate fluctuations of foreign currencies - even if these are due to foreseeable circumstances - Van Beest shall be entitled to adjust the price accordingly. In this case, Van Beest shall inform the customer accordingly.
- 3.6 Van Beest is entitled to reject the order(s) or to attach certain conditions to the delivery of the products. The fact that Van Beest has regularly delivered products to the customer in the past does not constitute a timely agreement of any kind between the parties or does not imply that Van Beest is obliged to accept any new orders.
- 3.7 Additional agreements or arrangements made at a later date, as well as any (verbal) agreements and/or commitments made by Van Beest 's employees or on behalf of Van Beest by distributors, intermediaries, agents or other middlemen, shall be binding for Van Beest only if and insofar as these have been confirmed in writing by a manager or authorised officer of Van Beest in writing.
- 3.8 Details given by Van Beest about the goods for delivery or service (such as weights, dimensions, performance values, load-bearing capacity, tolerances and technical data) as well as the representations of the same (e.g. drawings and illustrations) are only approximate if the applicability for the purpose of the contract is not exactly agreed upon. These are not guaranteed characteristics, but rather descriptions or markings of the delivery or service. Commercially customary deviations and variations, which are made according to legal regulations or constitute technical improvements, as well as the replacement of components by equivalent parts, are admissible insofar as they do not affect the usability for the contractually intended use.

#### **Article 4 Prices and payment**

- 4.1 Unless otherwise expressly agreed in writing, all prices by Van Beest or agreed with Van Beest are stated in euro plus the statutory VAT, transport costs, packaging, customs duties in the event of export deliveries, as well as fees and other public charges.
- 4.2 The prices quoted by Van Beest in catalogues, price lists etc. are indicative only and therefore without obligation and subject to change without notice.
- 4.3 Prices of products are the prices stated in the offer or the order, unless extraordinary circumstances arise after entering into the agreement, which may lead to a price change. Price increases, which are caused by a delayed production through no fault of Van Beest, or an increase in one or more cost price factors, shall be borne by the customer, even if such increases arise due to foreseeable circumstances or the introduction of government regulations.
- 4.4 In no case is a price change a reason for the termination of an agreement.
- 4.5 All amounts due must be paid within 30 days of the invoice date, unless agreed otherwise. The customer must make payment pay only in the manner specified by Van Beest and into a bank account designated by Van Beest. Payments are to be made in euro, unless expressly agreed otherwise in writing. All costs relating to bank transfers, currency conversion, credit costs, etc. shall always be borne by the customer.
- 4.6 In the event that the customer fails to pay in time, the outstanding amounts shall be subject to 5% interest p.a. The right to claim higher interest rates and further damages in the event of default shall remain unaffected.
- 4.7 After exceeding the payment period, the customer shall owe Van Beest all additional legal costs, including those incurred in the preparation and sending of reminders, in negotiations about a possible settlement and through measures in preparation of possible legal proceedings, as well as all other reasonable legal expenses incurred by Van Beest.
- 4.8 The claim of Van Beest on payment is immediately due if
- a payment period is exceeded,
  - insolvency proceedings on the customer's assets have been initiated or if the customer has made an application for insolvency,
  - the customer's assets or claims have been seized,
  - the company of the customer will be dissolved or liquidated.
- 4.9 All payments made by the customer shall first be used to pay the legal and extrajudicial costs incurred by Van Beest and thereafter any interest or damages incurred by Van Beest arising therefrom, and shall subsequently be credited against the oldest outstanding invoice that was sent to the customer, regardless of whether this invoice is based on any other agreement between the parties.
- 4.10 The customer is not entitled to postpone his payment obligations. The set-off with counterclaims of the customer or the retention of payments because of such claims is only permissible insofar as the counterclaims are undisputed or legally established.
- 4.11 Van Beest shall be entitled to carry out or perform any outstanding deliveries or services only against prepayment or security if Van Beest, after the conclusion of the agreement, becomes aware of any circumstances which may substantially reduce the creditworthiness of the customer and by which the payment of the outstanding claims of Van Beest is jeopardised by the customer from the respective agreement or from other individual orders for which the same framework agreement applies.

#### **Article 5 Delivery and delivery time**

- 5.1 Deliveries of products shall take place ex works (EXW, Incoterms at the time of the offer).
- 5.2 The agreed delivery time starts from the latest of the following dates:
- a. the day on which Van Beest has given the customer the written confirmation of order,
  - b. the date of receipt of the required deposit, if a deposit has been agreed on,
  - c. the date of receipt of the technical data, documents and/or collaterals to be provided by the customer to Van Beest by virtue of an agreement or for any other legal reason.
- 5.3 Van Beest may, without prejudice to its rights arising from default of the customer, demand an extension of the delivery and performance periods by the period in which the customer does not comply with his contractual obligations toward Van Beest.
- 5.4 If Van Beest is unable to meet the agreement in whole or in part within the agreed period, Van Beest shall undertake to notify the customer in writing as soon as possible.
- 5.5 Van Beest shall not be liable for the impossibility of delivery or for delays in delivery, as far as these are caused by force majeure or other events that were unforeseeable at the time of entering into the contract (e.g. operational disturbances of all kinds, problems in material or energy procurement, transport delays, strikes, lawful lockouts, shortage of labourers, energy or raw materials, difficulties in procuring necessary governmental approvals, governmental measures, or suppliers failing to supply, to supply correctly or in a timely manner), for which Van Beest is not responsible. If such events make the delivery or performance considerably more difficult or impossible for Van Beest and the hindrance is not only temporarily by nature, Van Beest shall be entitled to withdraw from the contract. In the case of temporary barriers, the delivery or performance periods are extended or the delivery or performance dates are postponed by the period of the drawback plus an appropriate start-up period. If, as a result of the delay, the customer cannot be expected to accept the delivery or service, he may pull out of the contract by means of an immediate written notification to Van Beest.
- 5.6 Van Beest shall be entitled to make partial deliveries as well as to settle partial deliveries separately, under the condition that
- the customer can use the partial delivery within the scope of the contractual purpose,
  - the delivery of the remainder of the ordered goods is ensured and
  - the customer shall not incur any substantial extra or additional costs (unless Van Beest is prepared to cover such costs)

- 5.7 The customer guarantees that the agreed delivery address is correct and complete, and that the products can actually be delivered at this address. If it is impossible to deliver (unload) the products, Van Beest can take the products back, store them at a different location and/or deliver them at a later date at the customer's expense and risk. The customer shall be responsible for any additional costs incurred. When stored by Van Beest, the storage costs are 0.25% of the invoice amount of the items to be stored for each week that has expired. Van Beest reserves the right to assert and prove any higher or lower costs of storage.
- 5.8 In the event that Van Beest is in default with a delivery or service, or is unable to make a delivery or service, their liability shall be limited in accordance with Article 9 of these General Terms of Delivery.

#### **Article 6 Place of performance, risk and retention of title**

- 6.1 The place of performance for all obligations arising from the contractual relationship is the seat of Van Beest, referred to in Article 1, unless agreed otherwise. If Van Beest is also to undertake the installation/assembly, the place of performance shall be the place where the installation/assembly is to be carried out.
- 6.2 The risk of damage, theft, loss, etc. of the products is passed on to the customer not later than upon the handover of the products to the carrier, freight forwarder or any other third party responsible for carrying out the dispatch, with the commencement of the loading operation being decisive. This also applies if partial deliveries are made or Van Beest has taken over other services (for example shipping or assembly). If the shipment or delivery is delayed due to circumstances caused by the customer, the risk is transferred from the day on which the delivery item is ready for dispatch and Van Beest has communicated this to the customer.
- 6.3 The goods delivered by Van Beest to the customer shall remain the property of Van Beest until full payment of all claims of Van Beest for all their current and future agreements with the customer has been made. The goods, as well as the goods which are subject to the retention of title in accordance with the following provisions, are referred to in the following as "reserved goods".
- 6.4 The customer shall keep the reserved goods free of charge for Van Beest.
- 6.5 The customer shall be entitled to process and sell the reserved goods in the normal course of business until the time of enforcement of the reservation of ownership (section 6.10). Pledges and security assignments are not permitted.
- 6.6 If the reserved goods are processed by the customer, it is agreed that processing takes place in the name and for the account of Van Beest as manufacturer and that Van Beest acquires the ownership or - if the processing is made of materials from several owners or the value of the processed goods is higher than the value of the reserved goods - the co-ownership (part-ownership) in the newly created goods in proportion to the value of the reserved goods to the value of the newly created goods. In the event that no such acquisition of ownership should take place at Van Beest, the customer shall transfer his future ownership or - in the aforementioned relationship - co-ownership of the newly created goods as a security to Van Beest. If the reserved goods are combined with other items to form one single item, or are inseparably mixed, and one of the other items is to be regarded as the main item, the customer shall transfer to Van Beest co-ownership of the single item in proportion as mentioned in sentence 1.
- 6.7 In the case of the resale of the reserved goods, the customer assigns to the purchaser the resulting claim against the purchaser to Van Beest as a precaution; in the case of Van Beest's co-ownership of the reserved goods their pro rata share of the co-ownership. The same applies to other claims that replace the reserved goods or otherwise arise with respect to the reserved goods, such as insurance claims or claims resulting from an improper act in case of loss or destruction. Van Beest warrants the customer revocably to collect the claims assigned to Van Beest in his own name. Van Beest may only revoke this collection authorisation in the event of a liquidation.
- 6.8 In the event that third parties get hold of the reserved goods, in particular by attachment, the customer shall promptly inform them of the ownership of Van Beest and inform Van Beest about this in order to enable them to enforce their property rights. The customer shall be liable to Van Beest if the third party is unable to reimburse Van Beest for their judicial or extrajudicial costs arising in this respect.
- 6.9 Van Beest shall release the reserved goods as well as the replacement goods or claims as long as their value exceeds the amount of the secured claims by more than 50%. It will then be up to Van Beest to choose the goods to be released.
- 6.10 If Van Beest withdraws from the contract for breach of contract by the customer (liquidation) - particularly in case of a delay in payment - Van Beest shall be entitled to reclaim the reserved goods.

#### **Article 7 Inspection and complaints**

- 7.1 If a commercial purchase is made pursuant to §§ 373 et seq. of the German Commercial Code, the customer's rights of defect presuppose that the latter has duly complied with the duties of inspection and complaint pursuant to § 377 of the Commercial Code and this Article 7.1:  
The goods are to be carefully inspected immediately after delivery to the customer or to the third party designated by him. The goods shall be deemed approved if Van Beest has not received a written complaint concerning obvious defects or other defects which were recognisable in an immediate and thorough investigation within 7 working days after delivery of the goods or otherwise within 7 working days after the discovery of the defect or any earlier date, in which period the defect was recognisable for the customer in normal use of the goods without closer examination.  
If a purchase agreement exists which is not a commercial purchase (e.g. because the customer is a non-buyer), the customer must immediately notify Van Beest of obvious or recognisable defects. Otherwise, the goods are considered approved. If a defect appears at a later stage, it must be reported immediately after discovery.  
The foregoing obligation to inspect and notify also applies in the case of the discovery of a defect within the scope of a supplier's regress (§ 478 para. 6 of the German Civil Code).
- 7.2 Complaints regarding invoices are to be communicated to Van Beest in writing within 8 days from the date of the invoice.

## **Article 8 Warranty, material defects**

- 8.1 The warranty period is one year from the delivery or, as far as acceptance is required, from the acceptance. This time limit does not apply to claims for damages from the customer of injuries to life, body or health or from intentional or grossly negligent breach of duty on the part of Van Beest or its vicarious agents, which are limited by the statutory provisions.
- 8.2 At the request of Van Beest, a rejected delivery item shall be returned to Van Beest freight-free. In case of justified complaints, Van Beest shall pay the cost of the most favourable shipping method; this shall not apply in the event of extra costs when the delivery item is located at a place other than at the place of its intended use.
- 8.3 In the event of material defects of the delivered goods, Van Beest shall be obliged and entitled to rectify or replace the goods after having made an appropriate decision within a reasonable period. In the event of the failure, i.e. the impossibility, unreasonableness, refusal or unreasonable delay of the repair or replacement delivery, the customer can withdraw from the contract or reduce the purchase price accordingly.
- 8.4 If the defect is due to the fault of Van Beest, the customer may demand compensation under the conditions set out in Article 9.
- 8.5 In the event of defects of components from other manufacturers which Van Beest is unable to fix for copyright or factual reasons, Van Beest will, at its discretion, assert its warranty claims against the manufacturers or suppliers on behalf of the customer or assign these claims to the customer. Warranty claims against Van Beest only exist in such a case if the judicial enforcement of the above claims against the manufacturer and supplier were unsuccessful, or - e.g. due to insolvency - were pointless. The statutory limitation of the customer's warranty claims against Van Beest is suspended for the duration of the legal dispute.
- 8.6 The warranty does not apply if the customer changes the delivery item without the consent of Van Beest or has it changed by a third party and the rectification of the defect thereby becomes impossible or unreasonable. In any case, the customer shall bear the additional costs for the corrective action as a result of the changes made.
- 8.7 A customer-agreed delivery of used items in an individual case takes place under exclusion of any warranty for material defects.

## **Article 9 Liability for damages due to fault**

- 9.1 The liability of Van Beest for compensation for any reason whatsoever, in particular from impossibility, delay, defective or incorrect delivery, breach of contract, breach of obligations with regard to contract negotiations and tort, shall be limited in accordance with this Article 9.
- 9.2 Van Beest shall not be liable in the case of simple negligence on the part of its organs, legal representatives, employees or other vicarious agents, insofar as this is not a violation of contractual obligations. Essential contractual obligations shall be obligations for the timely, defect-free delivery and installation/assembly of the delivered goods, its freedom from defects in rights as well as such defects which impair its functionality or usability more than insignificantly, as well as consultation, protection and custody obligations, which are to facilitate the contractual use of the delivery item for the customer or which are to protect the life and limb of the customer's or third parties' personnel or to protect the property of the customer against considerable damages.
- 9.3 Insofar as Van Beest is liable in accordance with Article 9.2 for damages, this liability is limited to damage which Van Beest has foreseen when concluding the contract as a possible consequence of a contractual infringement or which Van Beest should have foreseen by applying due care and attention. Furthermore, indirect damage and consequential damage resulting from defects in the delivery item are only subject to compensation insofar as such damage is typically to be expected when using the delivery item as stipulated.
- 9.4 In the event of liability for simple negligence, Van Beest's obligation to make compensation for property damage and any resulting financial losses is limited to the amount of EUR 2.500.000 per claim and a maximum amount of EUR 5.000.000 per annum (corresponding to the current cover sum of Van Beest's product liability insurance or third party insurance), even if this is a case of infringement of obligations essential to the contract.
- 9.5 The aforementioned exclusions and limitations of liability apply to the same extent in favour of the organs, legal representatives, employees and other agents of Van Beest.
- 9.6 Insofar as Van Beest provides technical information or acts as an adviser and this information or advice is not part of the contractually agreed scope of services owed by Van Beest, this is done free of charge and with the exclusion of any liability.
- 9.7 The limitations of this Article 9 do not apply to Van Beest's liability on account of deliberate actions, for guaranteed characteristics, on account of injury to life, limb or health or according to the product liability law.

## **Article 10 Suspension and dissolution**

- 10.1 Without prejudice to the other rights of Van Beest and without proof of any breach of duty or liability for damages, Van Beest shall have the right to withdraw from the agreement and/or the order in full or in part or suspend the following execution of the agreement, if
  - a. the customer fails to meet his obligations under the terms of the agreement against van Beest, or fails to meet his obligations in an adequate or timely manner, even if he is not at fault;
  - b. or certain facts have come to the attention of Van Beest, which give Van Beest valid grounds for believing that the customer shall not, or not in a timely manner, or not completely, fulfil his obligations;
  - c. or the customer becomes insolvent, is subjected to forced administration, or a comparable request has been filed, or the customer's company has been dissolved, is on strike or in liquidation.
- 10.2 In case of the existence of one of the provisions referred to in the preceding Article 10.1, subparagraphs a through to c, Van Beest shall be entitled to demand the immediate fulfilment of all claims.

## **Article 11 Intellectual property rights, contractual penalty**

- 11.1 Unless otherwise agreed in writing, Van Beest reserves all intellectual property rights in all offers, orders, designs, illustrations, drawings, models, delivered products and the like, delivered by Van Beest, irrespective of whether the customer had been charged for the manufacture of the same. Such data and objects may not be reproduced, used or made available to third parties without the prior written consent of Van Beest. The customer has to return these items to Van Beest at the request of Van Beest and to destroy any copies produced if they are no longer required by him in the normal course of business or when negotiations do not lead to the conclusion of a contract.
- 11.2 The customer shall indemnify Van Beest from all third-party claims resulting from the alleged infringement of intellectual property rights of such third parties.
- 11.3 The customer is not entitled to use Van Beest's trade name(s) and the marks or names such as "Green Pin®", "Green Pin Tycan®" and/or "EXCEL®" for his own business or relate this to "Green Pin®", "Green Pin Tycan®" and/or "EXCEL®" products without the prior written consent of Van Beest. Furthermore, the customer undertakes to notify Van Beest immediately of any breach of using the trade names or brands of Van Beest by third parties.
- 11.4 The customer is not entitled to remove or modify the designation of copyrights, trademarks, trade names or other intellectual or industrial property rights from the elements mentioned in Article 11.1 above.
- 11.5 The customer is obliged to pay a contractual penalty for each case of the infringement of a provision contained in this Article 11, the amount of which is established at the discretion of Van Beest in accordance with § 315 of the German Civil Code and shall be put before the competent court in the event of a dispute. Every infringement shall be regarded as a separate act, except for the continuation of the same infringement. In the case of continuous infringements, the contractual penalty shall be payable for each week of the infringement. Any other claims of Van Beest, including injunctive relief and claims for damages for which the contractual penalty shall be charged - subject to a different agreement - shall remain unaffected.

## **Article 12 European Sanctions Regulation**

- 12.1 The customer guarantees to comply with any EU restrictive measures following from the European Sanctions Regulation in respect of products supplied by Van Beest.
- 12.2 In particular, the customer may not deliver products delivered to him by Van Beest to a buyer / customer (the end user), insofar as the delivery violates a delivery ban by the EU in accordance with section 12.1 above. This applies, in particular for products whose delivery is to a prohibited country such as countries subjected by restrictive measures of the EU or another competent authority. The same applies if the buyer / customer of the customer is a natural person, a legal person or a legal entity who is on a prohibited list of the European Authority or another competent authority and / or who is resident in a country for which a delivery ban exists. Insofar as the delivery to the buyer / customer is permitted under EU regulations under conditions or other conditions, the customer undertakes to comply strictly with these. If the delivery to the buyer / buyer is in example only permitted with an export license, the customer guarantees not to deliver any products without such authorization.
- 12.3 The customer is obligated to inform Van Beest without further notice and without delay if the customer intends to deliver Van Beest products to a buyer / customer, which would violate a delivery ban in accordance with the paragraphs 12.1 and 12.2. The same applies if, according to the circumstances, such a breach cannot be excluded from the outset. The obligation of the customer to provide information also exists if the delivery to the buyer / customer is permitted only under conditions or other conditions (see section 12.2 sentence 4). The customer is obliged to provide Van Beest with detailed information about the buyer / customer, the scope and other modalities of the intended delivery at the first request, insofar as this is necessary to examine any breach of a delivery ban. In addition, the customer must provide suitable proof of compliance with any conditions / prerequisites (see section 12.2 sentence 4).
- 12.4 The customer agrees to ensure that any third party involved in the performance of the agreement with its buyer / customer will comply with the obligations and limitations contained in European Sanctions Regulation.
- 12.5 The customer further assures to agree with a buyer / customer to whom he supplies Van Beest products that he / she also complies with and observes the obligations and limitations resulting from the European Sanctions Regulation and that he / she ensures that such obligation is passed on to any further buyers / customers in the supply chain, respectively. Furthermore, the customer undertakes to ensure that the information obligations pursuant to Section 12.3 of these Terms and conditions in the supply chain are also passed on, whereby the information obligation in each case to the respective own supplier of the respective buyer / customer exists.
- 12.6 The customer shall indemnify and hold harmless Van Beest against any and all fines and penalties imposed on Van Beest and any and all claims, judgments, liabilities, losses, actions, debts or rights of action, of whatever kind, and all costs and expenses, including full and reasonable legal fees, arising out of any breach of the European Sanctions regulations by the customer and/or any breach of the obligations as enacted in this article 12.

## **Article 13 Governing law; disputes; language**

- 13.1 All legal relations between Van Beest and the customer of any kind are exclusively subject to the laws of the Federal Republic of Germany. The Vienna Sales Convention (CISG) and any other applicable international regulations are explicitly excluded.
- 13.2 If the customer is a merchant, a legal person of public law or a public special fund, or if the customer has no general court of jurisdiction in the Federal Republic of Germany, the court of jurisdiction for any disputes arising from the business relationship between Van Beest and the customer shall be the seat of Van Beest.
- 13.3 The German version of these General conditions of sale shall prevail.