

General Conditions of Sale and Delivery VitaCux GmbH

1. Scope

- 1.1. These General Terms and Conditions of Sale and Delivery apply exclusively to all offers, deliveries and deliveries of goods and services of VitaCux GmbH (hereinafter „VitaCux“) to entrepreneurs within the meaning of sec. 14 German Civil Code (hereinafter "BGB"). These General Terms and Conditions of Sale and Delivery shall not apply in the case of legal transactions with consumers within the meaning of sec. 13 BGB.
- 1.2. These terms and conditions apply exclusively; conflicting or deviating conditions of the Customer do not apply unless VitaCux expressly agrees to their applicability. These General Terms and Conditions of Sale and Delivery shall also apply if VitaCux delivers without reservation in the knowledge that Customer's terms and conditions conflict with or deviate from these General Terms and Conditions of Sale and Delivery.
- 1.3. The terms and conditions set forth in VitaCux order confirmations and these General Terms and Conditions of Sale and Delivery shall prevail.

2. Offer and Conclusion of Contract

- 2.1. Unless otherwise stated, all offers are non-binding, per kilogram and „ex works (EXW) Cuxhaven, Incoterms (current version)" including packaging.
- 2.2. VitaCux employees are not authorised to make verbal ancillary agreements or to give verbal assurances which deviate from an offer submitted in writing or a contract concluded in writing. Customer's orders become binding upon our written confirmation or by delivery
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3. Prices

- 3.1. The prices stated in VitaCux price lists are subject to change and, unless expressly stated otherwise, only apply to deliveries within the Federal Republic of Germany.
- 3.2. Unless otherwise agreed in writing, VitaCux prices are „ex works (EXW) Cuxhaven, Incoterms (current version)".
- 3.3. The prices stated in VitaCux price lists and offers are net prices. Added to this are value-added tax and other compulsory levies, which are shown separately on the invoice at the statutory rate on the day of invoicing. Any information on ancillary costs is without guarantee.
- 3.4. In the case of longer-term supply agreements, the agreed price shall apply for a period of four months from the conclusion of the agreement. Thereafter VitaCux shall be entitled to demand a price adjustment in accordance with the changed cost factors. If the price increase caused by this is more than 10 % of the initial price, the Customer is entitled to terminate the contract.
- 3.5. For shipments with an order value of less than EURO 100.00 (excluding VAT), the Customer will be charged a minimum quantity surcharge.

4. Deliveries

- 4.1. Delivery periods are only approximate and do not constitute fixed dates unless VitaCux has expressly confirmed them as „fixed" in writing.
- 4.2. Delivery periods begin – unless otherwise stated in VitaCux order confirmation – upon receipt of the order confirmation by the Customer.
- 4.3. If VitaCux is in default with a delivery, the Customer shall grant a period of at least two further weeks to fulfil the contract.
- 4.4. Unforeseen events such as strikes, labour disputes, disruptions in business operations, restrictive actions taken by government agencies, and natural disasters as well as delays in delivery of essential raw materials, components, primary and secondary packaging shall extend our delivery time limit by a reasonable amount if and insofar as these impediments demonstrably have a significant influence on production or delivery activities. VitaCux is not responsible for these impediments, even if they occur during an existing instance of delay or default. In that case Customer is not obliged to provide for the (remaining) consideration; VitaCux will reimburse the Customer for advance payments regarding services not yet carried out. Customer is not entitled to damages.
- 4.5. VitaCux is entitled to make the contractual performance in partial deliveries which concern at least 25 % of the order quantity. In the case of contracts whose processing extends over a longer period (deliveries on a call basis), each delivery shall be deemed to be a closed transaction. A defective or late partial delivery has no influence on the not yet executed part of the contract.
- 4.6. Unless otherwise expressly agreed in writing, VitaCux will ship the goods at the expense and risk of the Customer.
- 4.7. All deliveries include the necessary packaging. Disposal is either carried out by Customer or the respective costs will be added to the purchase price.
- 4.8. All offers and contracts are subject to VitaCux correct, complete and timely self-supply, insofar as VitaCux has concluded a congruent hedging transaction in this respect.

5. Place of performance, transfer of risk, shipment

- 5.1. Place of performance is the factory or warehouse from which the delivery is made.
- 5.2. The risk of accidental loss and accidental deterioration of the purchased goods shall pass to the Customer upon their provision to the Customer or the carrier at VitaCux factory. This also applies if VitaCux places the transport order for the Customer or carries out the transport itself. It is the Customer's responsibility to take out an insurance policy covering this risk.
- 5.3. VitaCux is free to choose the carrier, freight forwarder and means of transport in the absence of special instructions from the Customer.
- 5.4. When ordering railway consignments, the receiving station must be provided by the Customer.

6. Terms of payment

- 6.1. In the absence of an agreement to the contrary, all invoices shall be settled net cash within 30 days of the invoice date in the stated value date by the Customer. Cash discounts are not permitted.
- 6.2. If the Customer is in default with the settlement of an invoice or if circumstances become known to VitaCux after the conclusion of the agreement which is likely to significantly reduce the Customer's creditworthiness and thereby jeopardise the payment of VitaCux outstanding claims, all outstanding claims of VitaCux shall become due immediately irrespective of the agreed payment dates. VitaCux is also

entitled to demand securities and/or to withdraw from the current contract and other contracts already concluded with the Customer and to make future deliveries dependent on advance payment.

- 6.3. The Customer shall not be entitled to offset counterclaims or to assert a right of retention, unless the counterclaim or right of retention has been legally established or has been acknowledged by VitaCux in writing. The Customer is free to enforce excluded claims in court.
- 6.4. If payment deadlines are exceeded, VitaCux shall charge interest at a rate of 9 percentage points above the respective base interest rate of the German Federal Bank. In addition, VitaCux shall be entitled to claim the lump sum for delay of EUR 40 pursuant to sec. 288 para. 5 BGB. VitaCux reserves the right to claim further and higher damages.

7. Extended retention of title

- 7.1. The goods supplied by VitaCux remain the property of VitaCux until full payment of the purchase price.
- 7.2. If the Customer has paid the purchase price for the delivered goods, VitaCux retains title to the delivered goods until all liabilities stemming from the business relationship have been paid in full at the time of payment. In the case of a current account, the reserved title shall be deemed to secure VitaCux balance claim.
- 7.3. In the event of processing or transformation of the goods delivered under retention of title, VitaCux is the manufacturer within the meaning of the law (sec. 950 BGB), however to the exclusion of any manufacturer's obligations. If the processing or transformation takes place together with other materials not owned by VitaCux, VitaCux shall have pro rata co-ownership of the new item in the ratio of the value of the purchased item supplied by VitaCux (final invoice amount plus VAT) to that of the other materials at the time of processing. In all other respects, the same shall apply to the object created by processing or transformation as to the object of purchase delivered under retention of title.
- 7.4. The Customer is entitled to resell the goods delivered under retention of title in the ordinary course of business as long as he fulfills his obligations arising from the business relationship with VitaCux in a timely manner. He hereby assigns in advance to VitaCux his claims arising from justified and unauthorised resale, which corresponds to the invoice price (including VAT) of the goods delivered by VitaCux. Names and addresses of Customers and the amount of the respective claim shall be communicated to VitaCux upon first request. The Customer is authorised to collect the claims assigned to VitaCux as long as he properly meets his payment obligations to VitaCux and VitaCux does not revoke this authority for any other justified reason. VitaCux accepts the advance assignments set forth in this provision. If VitaCux has acquired co-ownership in the event of processing, combination or mixing, the assignment shall be made in proportion to the value of the goods delivered by VitaCux under retention of title (final invoice amount plus VAT) to the value of the goods sold by the Customer.
- 7.5. The Customer shall keep the purchased goods delivered under retention of title or the new goods created by combining, mixing, working or processing separate from other goods until they have been properly utilized. He shall bear all costs and expenses necessary for maintenance during this period and shall be liable to VitaCux for any deterioration. The goods must be adequately insured against damage, loss and destruction. Upon VitaCux request, written proof thereof must be provided.
- 7.6. Any pledging or transfer by way of security of the object of sale or the new object created is inadmissible. Any pledging or other impairment of VitaCux property by third parties shall be notified to VitaCux by the Customer without delay and shall be defended by appropriate means. If VitaCux has reason to protect its rights to the delivered goods by filing a third-party action of opposition pursuant to sec. 771 ZPO, the Customer shall be liable for court and out-of-court costs incurred by VitaCux, insofar as the defendant is not in a position to make a refund.
- 7.7. In the event of breach of contract by the Customer, in particular default of payment, the Customer shall no longer be entitled to resell or process the purchased goods subject to VitaCux retention of title. Costs for the protection of VitaCux rights shall be borne by the Customer. VitaCux is entitled to withdraw from the contract and to repossess the delivered goods. The Customer shall immediately provide VitaCux with all information about securities and hand over the relevant documents
- 7.8. VitaCux undertakes to release securities at the written request of the Customer to the extent that the realisable value of such securities exceeds the claims to be secured by more than 20 %; VitaCux shall be entitled to select the securities to be released.
- 7.9. If the retention of title under the provisions of this Clause 7 is not effective under the laws of the country in whose territory VitaCux products are located, the nearest effective legal security corresponding to the retention of title in that country shall be deemed agreed. If necessary, the Customer shall take all measures necessary to approve and maintain such a right.

8. Warranty

- 8.1. Information on the nature, composition, usability, suitability or effect of the purchased goods, the provision of samples and specimens as well as references to standards and guidelines shall only constitute assurances or guarantees of certain properties of the purchased goods if they are expressly confirmed to the purchaser in writing by VitaCux as such.
- 8.2. Deviations from specifications which are within the scope of permissible latitudes are not a defect in the sense of the warranty provisions. The object of purchase is to be checked by the buyer immediately upon delivery to the place of destination carefully and comprehensively according to the information on the delivery note for completeness and flawless condition. VitaCux must be notified immediately, but at the latest within five working days, and in writing of all details and possible consequences of damage, of any defects or shortfalls that become apparent in the course of this investigation. Hidden defects that could not be detected during a timely and careful inspection must be reported to VitaCux in writing without delay, but no later than three working days after becoming known. In the event of violations of the aforementioned obligation to inspect and give notice of

- 8.3. defects, the goods shall be deemed to have been approved. The samples required for the examination shall be taken by sworn collectors.

- 8.4. In the event of timely and justified complaints, the Customer's claims for defects are initially limited, at VitaCux choice, to replacement delivery or remedy of defects. If subsequent performance is unsuccessful, VitaCux may remedy the defect one more time.
- 8.5. If VitaCux cure fails, the Customer may, at its option, reduce the purchase price or withdraw from the contract. Claims for damages according to clause 9. remain unaffected.
- 8.6. Warranty claims against VitaCux cannot be assigned.
- 8.7. VitaCux shall be released from any warranty if defects in the Goods are due to compliance with Buyer's instructions or to defects in any transport, storage or use of the Goods arranged by Buyer.
- 8.8. The limitation period for warranty claims is one year after delivery of the purchased item or receipt of the service by the Customer, unless mandatory statutory provisions provide for a longer limitation period.
- 8.9. The statute of limitations in case of supplier recourse according to sec. 478, 479 BGB remains unaffected, it amounts to five years calculated from delivery of the defective item to the Customer.

9. Liability

- 9.1. VitaCux liable for simple negligence in the event of loss of life, assault, or impairment of health as well as violation of obligations whose fulfillment renders the proper execution of the agreement possible in the first place and that the Customer can generally trust will be complied with (essential contractual obligations).
- 9.2. Otherwise VitaCux is only liable for intent and gross negligence.
- 9.3. In the event of a breach of essential contractual obligations by simple negligence, VitaCux shall only be liable for foreseeable damages typical for the contract and not for consequential damages. All further claims of the Customer are excluded.

10. Applicable Law

The legal relationship between the contracting parties shall be governed exclusively by the laws of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the provisions of international private law are excluded.

11. Place of jurisdiction

Place of jurisdiction is Cuxhaven. VitaCux is, however, entitled to sue the Customer at the Customer's domicile.

12. Final Provisions

- 12.1. Legal statements made by the parties which require written form in accordance with the contract and/or these General Terms and Conditions shall be deemed to be valid even if they are submitted in text form.
- 12.2. Should one or more provisions of these General Terms and Conditions of Sale and Delivery or the individually negotiated contractual provisions be or become invalid, this shall not affect the validity of the remaining provisions.

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