

VERTICAS

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**General Terms and Conditions of VERTICAS GmbH and Verticas Service GmbH
Schoene Aussicht 59, 65193 Wiesbaden, Germany, as at 01.01.2014**

1. Scope

These General Terms and Conditions of Business shall apply to all contracts concluded between VERTICAS GmbH (hereinafter referred to as "VERTICAS") and the Customer and to all offers, supplies and services, unless otherwise expressly agreed in writing between the parties. Any terms and conditions or provisions amending the contract provided by the Customer shall be null and void.

2. Conclusion of contract

2.1 Any order submitted by the Customer, via the Internet or fax, shall be binding. A contract shall only take effect on acceptance of the order by means of a written, verbal or electronic (via the Internet including e-mail) confirmation from VERTICAS. Delivery or invoicing shall be considered as acceptance.

2.2 The Customer shall be responsible for the accuracy of the order and must notify VERTICAS promptly of any information of specifications required for the order.

2.3 All sales documents and price lists of VERTICAS are strictly confidential and must not be disclosed to third parties, unless said document were previously disclosed to the public or the customer without any violation of the non-disclosure agreement.

2.4 VERTICAS undertakes to abide by all current data protection laws.

3. Prices, payment terms

3.1 The agreed net prices plus statutory value added tax and delivery and packaging costs shall apply. Small quantities with a value of goods of less than 250 euros net shall be delivered subject to a packaging and transport surcharge as stipulated on the respective net price list of VERTICAS.

3.2 The Customer shall be required to make payment in full (net) within 30 days of receipt of the invoice. If payment is made within 10 days of receipt of the invoice, the Customer shall receive a discount of 2%.

3.3 If the Customer fails to meet the payment obligations set out above, VERTICAS shall be entitled to charge the Customer interest from the due date in the amount of 8% above the base rate, if the Customer is a "businessman", and to charge the Customer interest from the date of arrears in the amount of 5% above the base rate if the Customer is not a "businessman". VERTICAS shall reserves the right to make further claims.

3.4 Payments shall only be accepted by bank transfer or cash; bills of exchange and cheques shall only be accepted if expressly agreed and only as conditional payment subject to additional collection and discount charges.

3.5 If goods are delivered with a lead time of more than 4 months and material, wage or other costs increase after the contract is concluded, VERTICAS shall be entitled to increase the price accordingly. Any increase in price shall be limited to the rise in the cost of living and to the rise in the standard market prices for the goods ordered during the same period. VERTICAS shall notify the Customer of price increase in good time. If the price increase is more than 5% of the original price, the Customer shall be entitled to withdraw from the contract. The Customer must assert the aforementioned right immediately in writing once notified of the price increase.

3.6 If VERTICAS becomes aware of circumstances that indicate that the Customer's creditworthiness or ability to make payment is impaired, VERTICAS can demand advance payment for future deliveries. This shall also apply if said circumstances become known between the conclusion of contract and delivery or following one or more part deliveries. If the Customer rejects the advance payment or fails to make payment despite a deadline having been set, VERTICAS shall be entitled to withdraw from the contract and to claim compensation. If an application for insolvency is submitted in relation to the Customer's assets or if insolvency proceedings are instituted, VERTICAS shall also have the right to withdraw from the contract and to claim compensation without further requirements being met. On receipt of the notice of withdrawal, all outstanding invoices and payment claims from VERTICAS shall fall immediately due and payable.

3.7 The Customer may only set off these claims against undisputed or valid claims. The Customer may only claim a right of retention within the framework of this same legal relationship.

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4. Delivery of goods

4.1 The delivery of goods shall be made from the warehouse of VERTICAS or its vicarious agents. The Customer shall retrieve or collect the goods as soon as notified by VERTICAS that the goods are ready. Otherwise VERTICAS shall be entitled to store the goods at cost to and at the risk of the Customer and to invoice the goods as if delivered ex works.

4.2 VERTICAS shall decide on the delivery method and means of transportation. The Customer shall bear any costs and risks associated with the shipping of the goods. Risk shall pass to the Customer as soon as VERTICAS has handed over the goods to the transport company.

4.3 The Customer shall be responsible for asserting and securing claims due to transport damage against the transport company. On request VERTICAS may transfer its contractual claims against the transport company to the Customer, if such claims exist and if VERTICAS has not suffered own damages.

4.4 VERTICAS shall generally deliver goods packaged by the manufacturer, but reserves the right to use its own appropriate packaging. The Customer shall have no claim to (new) packaging sealed by the manufacturer for substitute deliveries.

4.5 Details regarding lead times are non-binding, unless expressly indicated as a binding lead time. In cases of force majeure (e.g. war, embargo, extensive failure of transport routes, etc.) and other circumstances that are beyond the control of VERTICAS, the agreed lead times shall be postponed accordingly. VERTICAS shall be entitled to provide delivery or service before the stipulated or agreed time.

4.6 VERTICAS shall be entitled to make part deliveries, as far as reasonable.

4.7 If the service or goods requested are not available and VERTICAS is not responsible for said unavailability, VERTICAS shall be entitled to withdraw in full or in part from the contract. In this case, VERTICAS undertakes to immediately notify the Customer of the non-supply and to immediately refund any consideration received. This shall also apply in cases of force majeure.

5. Obligation to inspect

5.1 The Customer shall be required to inspect the goods immediately upon receipt. If the Customer fails to report any defects, shortfalls or incorrect deliveries within 4 working days, the delivery shall be considered to have been accepted.

5.2 Complaints concerning hidden defects must be notified to VERTICAS immediately within 4 working days after they are discovered.

5.3 If the Customer has resold newly manufactured goods acquired from VERTICAS without any modifications or combinations with other articles in a continuous supply chain to an end consumer, notifications of defect must be forwarded immediately to VERTICAS within 4 working days.

6. Claims of defect

6.1 If a defect occurs, the Customer's statutory claims of defect shall apply subject to the restriction set down in point 7 of these General Terms and Conditions of Business.

6.2 If the Customer is a "businessman", the statute of limitations for claims of defect made by the Customer, i.e. remedy, self-performance including reimbursement of necessary expenses, to compensation for damages or for wasted expenditure, shall be 12 months from commencement of the statutory period of limitation. This shall not apply in cases of intent, fraudulent concealment of a defect, absence of a guaranteed characteristic, injury to life, limb or health or freedom and if the Customer has resold newly manufactured goods acquired from VERTICAS without any modifications or combinations with other articles in a continuous supply chain to an end consumer.

6.3 If part performance or acceptance is made, the period of limitations shall commence on delivery of the respective part performance or on part acceptance.

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7. Liability

7.1 VERTICAS shall be liable without limit in the case of intent or gross negligence and injury to life, limb or health, if VERTICAS is responsible for the breach of duty, or due to the fraudulent concealment of a defect or absence of a guaranteed characteristic. A breach of duty by VERTICAS shall be equivalent to a breach of duty by its legal representatives or vicarious agents. Liability according to the Product Liability Act remains unaffected.

7.2 VERTICAS' liability shall be limited to foreseeable damages that are typical of such a contract in the case of a breach of essential contractual obligations caused through ordinary negligence (material obligation or essential secondary obligation), or default or impossibility of performance caused through ordinary negligence. Liability caused through ordinary negligence shall be excluded in the event of breach of non-essential contractual obligations.

7.3 The Customer shall be liable for contributory negligence, particularly in the case of organisational errors or insufficient data backup or information. VERTICAS shall only be liable for the recovery of data if the Customer has taken all customary and appropriate precautions to backup the data, uses the latest firewalls and anti-virus programmes and has ensured that the data can be reconstructed from data material kept in machine-readable format with reasonable use of resources.

8. Modification of goods

VERTICAS may modify and improve the goods in accordance with any technical advances made, without notifying the Customer in advance, as long as such modifications and improvements do not permanently impair or change the function or form of the goods. VERTICAS shall be entitled to deliver to the Customer the successor model of the model ordered, if the model ordered can no longer be supplied and if there are no permanent differences in the function or form of the successor model.

9. Intellectual property rights, non-assignment

9.1 The Customer shall be liable for the risk of admissibility of goods or products designed at the Customer's request or in accordance with the Customer's specifications under intellectual property laws (e.g. the application of the Customer's logos and company symbols). The Customer shall release VERTICAS inter partes from any third-party claims from the infringement of industrial property rights in relation to these goods and products.

9.2 VERTICAS shall hold the exclusive rights to the designs, templates, samples, specifications, presentations, artwork and other materials created by VERTICAS. The Customer shall not disclose these materials to third parties, in particular in order to obtain offers from third parties.

9.3 The Customer shall not assign claims to which the Customer is entitled as a result of the contractual relationship with VERTICAS.

10. Reservation of title

10.1 The goods supplied shall remain the property of VERTICAS until the Customer has settled in full all claims arising under the contract.

10.2 Following its legal withdrawal from the contract, VERTICAS shall be entitled to recover, otherwise sell or in any way dispose of the goods if the purchase price has not been paid in full.

10.3 The Customer shall hold the goods in trust on behalf of VERTICAS until payment is made in full and shall store the goods separately from other property and third parties. Moreover, the reserved property must be stored, secured and insured properly and must be clearly labelled as property of VERTICAS.

10.4 Until payment is made in full, the Customer may use the goods in the normal course of business or resell the goods subject to reservation of title. If resold, the Customer shall assign the resulting claims in the amount of the invoice and all associated rights and special ranks to VERTICAS, who accepts. The Customer shall be revocably entitled and bound to collect the assigned claims. VERTICAS can notify the Customer's buyer of the assignment at any time. The value of the retained goods shall be the invoice amount.

10.5 If the goods are post-processed and if the post-processing is carried out in parts which are not the property of VERTICAS, VERTICAS shall acquire partial ownership according to the percentage value of the retained goods. This shall also apply if the goods of VERTICAS are combined with the goods of a third party.

10.6 The Customer shall not be entitled to transfer or pledge the retained goods as security. In case of seizure or another form of intervention by third parties, the Customer must immediately notify VERTICAS.

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10.7 The reservation of title shall also apply if the individual claims of VERTICAS are transferred to a running account or if a balance is recognised; unless the balance is settled.

10.8 If the Customer suspends payments, if insolvency proceedings are applied for or instituted on the Customer's assets or an administrator is appointed, the Customer's aforementioned rights to resell, process and collect the resulting claims shall be null and void.

10.9 If the resulting collateral of VERTICAS exceed the claims to which it is entitled by more than 20%, VERITAS undertakes to release the collateral when requested by the Customer or an involved third party of his choosing in the relevant amount.

11. Severability clause, jurisdiction, miscellaneous

11.1 In the event that individual provisions of these General Terms and Conditions of Business are or become invalid, then this shall not affect the validity of the contract or the General Terms and Conditions of Business as a whole.

11.2 German law shall apply excluding the United Nations Convention on Contracts for the International Sale of Goods and the conflicts of law provisions under German law.

11.3 If the Customer is a "businessman", the place of jurisdiction shall be Wiesbaden. VERTICAS shall be entitled to take action against the Customer at his general place of jurisdiction.

11.4 Any ancillary agreements, amendments or additions to the contract including the removal of this stipulation for written form shall be done in writing.

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