

## General Terms and Conditions of Sale and Delivery of VG-ORTH GmbH & Co. KG

**Note:** Only the German version shall be authoritative for foreign clients for the interpretation and application of the present Terms and Conditions and supplementary written agreements. Translations shall only serve to provide the client with information.

### § 1 General provisions, scope

1. The Terms and Conditions shall apply to all present and future business relationships.
2. The Customer in the context of the Terms and Conditions shall be an entrepreneur. Entrepreneurs in the context of the business relationships shall be natural persons or legal entities or partnerships with a legal capacity with which business relationships are established, which practise a commercial or independent professional occupation.
3. Every Customer shall acknowledge the following Terms and Conditions of Sale and Delivery as contractually binding. The present General Terms and Conditions of Sale and Delivery shall be deemed accepted upon receipt of the goods at the latest. Deviating, conflicting or supplementary general terms and conditions shall not become part of the contract, even if they are known, unless their validity is expressly agreed to in writing. References by the Buyer to its terms and conditions are hereby rejected. We shall not acknowledge conflicting terms and conditions or terms and conditions of the Buyer that deviate from our Terms and Conditions of Sale, not even through the execution of the contract without reservation.

### § 2 Conclusion of the contract, delivery and terms of payment

1. Our quotations shall be subject to change.
2. By ordering goods, the Customer is making a binding declaration that it wants to purchase the ordered goods. VG-ORTH GmbH & Co. KG is entitled to accept the offer to conclude a contract contained in the order within two weeks of agreement. Acceptance can either be declared in writing or through the delivery of the goods to the Customer.
3. The prices shall be net, delivery free to the construction site or warehouse in Germany (mainland), taking full loads of approx. 24 t loading weight as a basis, excluding VAT, subject to change, excluding any other taxes, surcharges, import and export fees and customs duties, payable after receipt of the invoice. A prerequisite for delivery is a road condition that allows use by HGVs with a total weight of up to 40 t. Delivery free to the construction site or warehouse means delivery excluding unloading. The costs of unloading (e.g. unloading by HGV on-board crane) shall be borne by the recipient. In the event of deliveries of small order quantities, low weight surcharges shall be charged. In the event of collection by the Customer,

a reimbursement of freight costs shall take place, in accordance with the respective reimbursement conditions of VG-ORTH GmbH & Co. KG, which can be made available on request. Differing delivery quantities shall apply for the delivery of loose goods in construction site containers (silo/container), depending on the size of the container.

4. The offsetting of claims against counter-claims shall only be permitted in the case of undisputed, acknowledged or legally binding claims. Invoices from VG-ORTH GmbH & Co. KG shall be due 30 days after receipt of the invoice and payable without any deduction. In the event of payments within 8 days of the invoice date, VG-ORTH GmbH & Co. KG shall grant a 2 % early payment discount, in the event of an immediate direct debit a 3 % early payment discount from the discountable amount shown in the invoice. The final invoice amount less freight, the pallet value and logistics costs shall be deemed discountable.
5. In the event of a positive credit rating, payment by SEPA company direct debit shall be possible. The pre-notification may give notice of several direct debits. The term for the transmission of the pre-notification shall be reduced from 14 days to one day. It shall take place through the disclosure of the relevant information on the invoice or through the transmission of the data (along with the invoice data) electronically.

### § 3 Complaints and warranty

1. VG-ORTH GmbH & Co. KG shall provide a warranty for defects in the goods initially at its own discretion through repairs or a replacement delivery.
2. If the supplementary performance fails, the Customer, at its discretion, may demand a reduction in the fees or the rescission of the contract. In the event of a minor infringement of the contract, especially in the event of minor defects, the Customer shall, however, have no right of rescission.
3. Complaints must be reported within a period of two weeks from the receipt of the goods and before further processing in any case, sending a sample. Otherwise, the assertion of warranty claims shall be excluded. Punctual dispatch shall be sufficient for the observance of the deadline. The Customer shall bear the full burden of proof for all the requirements for making claims, in particular for the defect itself, for the time of the discovery of the defect and for the

punctuality of the notification of the defect.

4. If the Customer chooses to rescind the contract due to a defect in title or quality, after a supplementary performance has failed, it shall not be entitled to any compensation for the defect. If the Customer chooses compensation after a supplementary performance has failed, the goods shall remain with the Customer if this is feasible. The compensation shall be limited to the difference between the purchase price and the value of the defective item. This shall not apply if VG-ORTH GmbH & Co. KG has maliciously caused the breach of contract.
5. The warranty period shall amount to one year from the delivery of the goods. This shall not apply if the Customer has not reported the defect in good time (3. of the present provision).

### § 4 Limitations of liability

1. In the event of infringements of obligations due to slight negligence, the liability of VG-ORTH GmbH & Co. KG shall be limited to the foreseeable, direct, average damages typical for the contract, according to the type of goods. This shall also apply in the event of infringements of obligations due to the slight negligence of the legal representatives of VG-ORTH GmbH & Co. KG or vicarious agents. VG-ORTH GmbH & Co. KG shall not be liable to customers in the event of the infringement of nonessential contractual obligations due to slight negligence.
2. The aforementioned limitations of liability shall not affect claims of the Customer arising from product liability. The limitations of liability shall not apply in the case of bodily injury and damage to health attributable to VG-ORTH GmbH & Co. KG or in the event of the loss of life of the Customer.
3. Claims for compensation by the Customer on account of a defect shall become statute-barred one year after the delivery of the goods. This shall not apply if VG-ORTH GmbH & Co. KG can be accused of malice.

### § 5 Packaging, construction site silos and containers and conveyors and lifting equipment

1. Unless indicated otherwise on the invoice, the packaging shall be disposable packaging that is not taken back. If packaging deviating from the standard packaging is used at the Customer's request, this shall be invoiced.
2. If the goods are dispatched on pallets, these shall be invoiced. In the event of the carriage paid return of Euro pallets in a good, usable

- and clean condition to one of our plants/distribution centres in Germany within 6 months of the delivery, they shall be reimbursed by credit note. A later return shall be excluded. The number of returned Euro pallets may not exceed the quantity delivered by VG-ORTH GmbH & Co. KG. In the case of returns, the customer number and invoice number must be indicated.
3. Other unloading aids, e.g. plate package grippers, shall remain the property of VG-ORTH GmbH & Co. KG and must be returned to one of the plants carriage paid.
  4. A rental fee shall be charged for their use. If they are not returned within one month of delivery, the Customer shall be charged for the loading aids.
  5. Separate agreements shall apply to the provision of construction site silos and containers and conveyors and lifting equipment, in particular the conditions of installation for depressurised containers (see leaflet "Safe Handling of Transportable Construction Site Silos" of the building plaster industry group in the Federal Association of the Plaster Industry in Berlin in its valid version), as well as supplementary information in the valid VG-ORTH price list.
  6. The Customer shall be liable, in particular, for all risks and damages that arise as a result of the use of construction site containers, conveyor systems, silo jets or cleaning machines and that occur on these machines themselves.

#### § 6 Rental and service costs

1. In limited regions, VG-ORTH GmbH & Co. KG shall provide silo mat conveyor systems, silo jet conveyor systems built on the container loaned from VG-ORTH, cleaning machines or unloading aids (lifting equipment) for a fee.
2. The liability for the rented systems shall be transferred to the Customer at the time of the handover of the machinery or equipment. If faults occur during the operation, VG-ORTH GmbH & Co. KG must disclose these immediately. Costs for downtime shall not be assumed.
3. Costs for repairs for damages arising after the handover shall be invoiced.

#### § 7 Retention of title

1. The delivered goods shall remain the property of VG-ORTH GmbH & Co. KG until the payment in full of all the claims arising from a current business relationship.
2. The Customer is obliged to handle the goods with care.

3. The Customer is obliged to inform VG-ORTH GmbH & Co. KG immediately of access to the goods by third parties, for example in the event of an attachment, as well as of any damages or the destruction of the goods.
4. VG-ORTH GmbH & Co. KG is entitled, in the event of conduct on the part of the Customer that is contrary to the contract, in particular in the event of default of payment or in the event of the infringement of an obligation under 2. and 3. of the present provision, to rescind the contract and to demand the return of the goods.
5. The Customer is entitled to sell the goods on in the ordinary course of business. It hereby assigns all accounts receivable that arise from the resale to a third party, up to the invoice value. VG-ORTH GmbH & Co. KG shall accept the assignment. After the assignment, the Customer shall be authorised to collect the account receivable. VG-ORTH GmbH & Co. KG reserves the right to collect the account receivable itself, as soon as the Customer fails to meet its payment obligations properly and gets into default of payment.
6. The handling and processing of the goods by the Customer shall always take place in the name of and on behalf of VG-ORTH GmbH & Co. KG. If the goods are processed with items that do not belong to VG-ORTH GmbH & Co. KG, VG-ORTH GmbH & Co. KG shall acquire joint ownership of the new item in proportion to the value of the goods delivered by VG-ORTH GmbH & Co. KG to the other processed items. The same shall apply if the goods are mixed with other items that do not belong to VG-ORTH GmbH & Co. KG.

#### § 8 Dispatch

1. The risk of the accidental loss and the accidental deterioration of the goods shall be transferred to the Customer upon the handover of the goods, or in the event of sale by delivery to a place other than the place of fulfilment, upon the delivery of the goods to the forwarding agent, the carrier or another person or institution designated to perform the shipment.
2. The goods shall be dispatched at the risk of the Customer, even if VG-ORTH GmbH & Co. KG uses its own HGVs or carriers. An insurance policy shall only be taken out by VG-ORTH GmbH & Co. KG at the express request of the Customer. The resulting costs must be borne by the Customer. In the event that dispatch is delayed at the request of or due to the fault

of the Customer, the storage of the goods shall take place at the risk and expense of the Customer. The notification of readiness for dispatch by VG-ORTH GmbH & Co. KG shall be equated to the dispatch.

#### § 9 Force majeure

In the event of force majeure, VG-ORTH GmbH & Co. KG shall be exempt from the obligation to deliver for the duration of the disturbance. The same shall apply in the event of circumstances that are unforeseeable for VG-ORTH GmbH & Co. KG for which it is not to blame, which hinder or prevent delivery by suppliers of VG-ORTH GmbH & Co. KG. In this case, VG-ORTH GmbH & Co. KG shall be entitled to a right of withdrawal.

#### § 10 Other provisions

Changes or additions to the contract require the written form in order to be valid. The requirement for the written form shall also be satisfied by e-mail or fax. The use of products of VG-ORTH GmbH & Co. KG shall take place at the Customer's own responsibility.

#### § 11 Place of fulfilment and place of jurisdiction

1. The place of fulfilment and the exclusive place of jurisdiction shall be the registered place of business of VG-ORTH GmbH & Co. KG. The law of the Federal Republic of Germany shall apply. The application of the Uniform Law on the International Sale of Goods and the Uniform Law on the Formation of Contracts for the International Sale of Goods shall be excluded.
2. The place of jurisdiction shall be Holzminden Local Court, or Hildesheim District Court from a value in dispute of € 5,000.00.

#### § 12 Severability clause

If one of the above provisions is or becomes invalid, the validity of the other provisions shall remain unaffected by this. In this case, the Parties shall replace the invalid provision with a provision that comes as close as possible to the economic purpose of the invalid provision.

Stadtdendorf, February 2014

VG-ORTH GmbH & Co. KG