

General Terms and Conditions of VX Test Solutions GmbH

- Status February 2022 -

§ 1 Scope of the terms and conditions

1. The deliveries, services and offers of VX Test Solutions GmbH are exclusively based on these terms and conditions. These shall therefore also apply to all future business relations, even if they are not expressly agreed again. These terms and conditions shall be deemed accepted at the latest upon acceptance of the goods or services. General terms and conditions of the buyer, in particular purchasing conditions, are hereby already contradicted, i.e. they are not recognised even if we do not explicitly contradict them again after receipt by us.

2. Deviations from these terms and conditions are only effective if we confirm them in writing.

§ 2 Offer and conclusion of contract

1. The offers of VX Test Solutions GmbH are subject to change and non-binding. Declarations of acceptance and all orders require our written or telex confirmation to be legally effective. The same applies to amendments, modifications or side agreements. In the case of immediate delivery, the written confirmation can also be replaced by an invoice.

2. Drawings, illustrations, dimensions, weights and other performances are only to be understood as approximate values and, in particular, do not constitute a guarantee of properties unless they are expressly designated in writing as binding.

3. VX Test Solutions GmbH is entitled to cancel an order if it should turn out that information provided by the customer that is essential for the execution of the order is incorrect or misleading.

§ 3 Prices

1. Unless otherwise stated, VX Test Solutions GmbH shall be bound by the prices contained in its offers for 15 days from the date thereof. The prices stated in our order confirmation are binding. Additional deliveries and services will be charged separately.

2. Unless otherwise agreed, the prices are exclusive of packaging, transport, freight insurance, plus the value added tax valid on the day of delivery ex warehouse Kiel or, in the case of direct shipment, ex German border or German port of import.

3. We reserve the right to correct typographical errors and recognisable calculation errors.

§ 4 Delivery and performance time

1. Dates and delivery periods are non-binding unless expressly agreed otherwise in writing. The specification of certain delivery periods and delivery dates by VX Test Solutions GmbH is subject to the correct and timely supply of VX Test Solutions GmbH by suppliers and manufacturers.

2. VX Test Solutions GmbH is entitled to partial deliveries and partial services. In the case of supply contracts, each partial delivery and partial performance shall be deemed to be an independent service.

§ 5 Default of acceptance

1. For the duration of the buyer's default in acceptance, VX Test Solutions GmbH is entitled to store the delivery items at the buyer's risk and expense. VX Test Solutions GmbH may also use a forwarding agent or a warehouse keeper for this purpose.

2. During the period of default of acceptance, the buyer shall pay VX Test Solutions GmbH a fixed rate of 1% of the purchase price per month as compensation for the storage costs incurred without further proof. If higher storage costs are incurred, VX Test Solutions GmbH may demand reimbursement of these costs from the buyer against proof.

3. If the buyer refuses to accept the delivery items after the expiry of a grace period set for him or declares that he does not wish to accept the goods, VX Test Solutions GmbH may refuse performance of the contract and claim damages for non-performance. VX Test Solutions GmbH is entitled to demand either a lump sum of 25% of the agreed purchase price or compensation for the actual damage incurred from the buyer as compensation for damages. If VX Test Solutions GmbH chooses the lump sum, the customer is free to prove that a damage in the amount of 25 % has not occurred.

§ 6 Transfer of risk

The risk shall pass to the buyer as soon as the consignment has been handed over to the person carrying out the transport or has left the warehouse of VX Test Solutions GmbH for the purpose of shipment. If the shipment is delayed or becomes impossible through no fault of our own, the risk shall pass to the buyer upon notification of readiness for shipment. An assumption of the transport costs by VX Test Solutions GmbH agreed in individual cases has no influence on the transfer of risk.

§ 7 Warranty

1. The warranty period begins with the date of delivery. If our operating or maintenance instructions are not followed, modifications are made, parts are replaced or consumables are used that do not comply with the original specifications, any warranty shall lapse insofar as the defect is attributable to this. This also applies insofar as the defect is due to improper use, storage and handling of the devices or third-party intervention as well as the opening of devices. Insignificant deviations in colour, dimensions and/or other quality and performance characteristics of the goods do not trigger any warranty rights.

2. The buyer must notify us in writing of any defects without delay, but no later than one week after receipt of the delivery item. Defects which cannot be discovered within this period even after careful inspection must be notified to us in writing immediately after discovery.

3. Insofar as there is a defect in the purchased item for which we are responsible, we shall be obliged, at our choice, to repair or replace the item. We shall then bear all labour and material costs necessary for rectification. The defective part or device must be sent in for repair or delivered to VX Test Solutions GmbH, Im Saal 2, 24145 Kiel, Germany, with a precise description of the defect, including the model and serial number and a copy of the delivery note with which the device was delivered, unless an on-site service has been expressly agreed in writing. No new warranty periods come into effect as a result of the replacement of parts, assemblies or entire devices. The warranty is limited exclusively to the repair or replacement of the damaged delivery items. When sending in the devices to be repaired, the buyer must ensure that data on them which are essential to him are backed up by copies, as these may be lost during repair work. VX Test Solutions GmbH accepts no liability for lost data and any consequential damage resulting therefrom.

4. If the rectification of defects fails after a reasonable period of time, the buyer may, at his discretion, demand a reduction of the remuneration or rescission of the contract.

5. In the case of devices or parts for which no fault could be detected, VX Test Solutions GmbH will invoice the inspection effort.

6. Liability for normal wear and tear is excluded. Furthermore, warranty claims do not exist for wear parts such as relays and other wear materials.

7. Only the direct purchaser is entitled to warranty claims against VX Test Solutions GmbH and these are not assignable.

8. The above paragraphs conclusively contain the warranty for products, projects and other services and exclude other warranty claims of any kind, unless there is intent or gross negligence on the part of VX Test Solutions GmbH.

§ 8 Retention of title

1. The goods remain the property of VX Test Solutions GmbH until they have been paid for in full (reserved goods). Any processing or transformation is always carried out for VX Test Solutions GmbH as manufacturer in the meaning of §950 of the German Civil Code (BGB), without obligating VX Test Solutions GmbH. In case of processing or combination of the goods subject to retention of title with other goods, VX Test Solutions GmbH shall in principle have a co-ownership share in the new item, namely in case of processing in the ratio of the value of the goods subject to retention of title to the value of the new item, in case of combination in the ratio of the value of the goods subject to retention of title to the value of the other goods. Should the customer become the exclusive owner, he shall already now grant us co-ownership in the ratio of the aforementioned values and shall keep the item in safe custody for us free of charge. If the goods created by processing or combination are resold, the advance assignment agreed below shall only apply to the amount of the value of the reserved goods.

2. The buyer is entitled to process and sell the reserved goods in the ordinary course of business as long as he is not in delay. Pledges or transfers by way of security are not permitted. The buyer hereby assigns to us by way of security all claims arising from the resale or any other legal reason (insurance, tort) in respect of the goods subject to retention of title (including all current account balance claims). We irrevocably authorise him to collect the claims assigned to us for his account in his own name. The direct debit authorisation can only be revoked if the buyer does not properly fulfil his payment obligations.

3. In the event of access by third parties to the goods subject to retention of title, the buyer shall point out the ownership of VX Test Solutions GmbH and notify the seller immediately.

4. If the buyer defaults on payment or culpably fails to fulfil other material contractual obligations, VX Test Solutions GmbH shall be entitled to take back the goods subject to retention of title or, if applicable, to demand assignment of the buyer's claims for return against third parties. Our taking back or seizure of the goods subject to retention of title does not constitute a withdrawal from the contract, unless the law on payment by instalments applies.

§ 9 Payment

1. Invoices are payable by cash in advance or upon pick-up, unless otherwise agreed. Delivery is always freight unpaid, i.e. at the buyer's expense by parcel service, freight forwarder or own vehicle, unless expressly agreed otherwise.

2. VX Test Solutions GmbH shall be entitled to set off payments against the buyer's older debts despite any provisions of the buyer to the contrary. If costs and interest have already been incurred, we shall be entitled to offset the payment first against the costs, then against the interest and finally against the main performance. The buyer shall be informed of this.

3. If the buyer is in delay, we are entitled to charge interest in accordance with §288 of the German Civil Code (BGB) for commercial customers. They shall be set at a lower rate if the buyer proves a lower charge.

4. All outstanding debts shall become due immediately if the buyer defaults on payment, culpably fails to comply with other material obligations arising from the contract or if we become aware of circumstances which are likely to reduce the creditworthiness of the buyer, in particular suspension of payments, pendency of composition or bankruptcy proceedings. In these cases, we are entitled to withhold outstanding deliveries or to execute them only against advance payment or guarantees.

5. The buyer is only entitled to offset or exercise a right of retention if the counterclaims have been legally established or are undisputed.

§ 10 Prohibition of assignment

The assignment of claims against us to third parties is excluded unless we have agreed to the assignment explicitly. Insofar as it is not a matter of generally unassignable claims in accordance with §7 No.7 of these GTC (warranty claims), consent is to be granted if the purchaser proves significant interests which outweigh our interests in maintaining the prohibition of assignment.

§ 11 Limitation of liability

Claims for damages against us, irrespective of the legal grounds, are excluded unless there is intent or gross negligence.

§ 12 Data protection and data storage

VX Test Solutions GmbH is entitled to process the data about the buyer received with regard to the business relations or in connection with them, regardless of whether they originate from the buyer itself or from third parties, within the meaning of the Federal Data Protection Act. Customer data is stored in accordance with §33 Bundesdatenschutzgesetz (BDSG - Federal Data Protection Act).

§ 13 Confidentiality

The customer is obliged to treat all commercial and technical information concerning VX Test Solutions GmbH deliveries and services as strictly confidential - even after termination of the contractual relationship - and in particular not to make it available to competitors of VX Test Solutions GmbH, even if it is not explicitly designated as secret. This confidentiality obligation does not apply to information that was published or already known to the customer at the time of transfer, was published after transfer to the customer without the customer being responsible for this, or is lawfully made freely available to the customer. The customer shall ensure that its vicarious agents, e.g. employees, representatives, also fully comply with this confidentiality obligation.

§ 14 Applicable law

1. The law of the Federal Republic of Germany shall apply to the terms and conditions and the entire legal relationship between VX Test Solutions GmbH and the buyer to the exclusion of the CISG. Insofar as the buyer is a registered trader within the meaning of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law, Kiel shall be the place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship. Furthermore, Kiel is the place of fulfilment.

2. Should individual or several regulations of these General Terms and Conditions be or become ineffective or contain a gap in the regulations, the contracting parties undertake to enter into negotiations with the aim of replacing or supplementing the ineffective or incomplete regulation with an appropriate individual agreement which corresponds as far as possible to the economic purpose of the intended regulation. The validity of the remaining regulations remains unaffected by this.