

Letter of acceptance.

Dear valued customer,

Being your supplier we will basically accept your written Terms & Conditions and other contractual documents.

However, please note that our acceptance is based on the following remarks and exemptions:

1. As the design of the products is in the full responsibility of the Buyer, no warranty for the design, for fitness for particular purposes for which the products might be required, or for a non-infringement of industrial property rights can be given by us.

Also we do only warrant that the products will be in compliance with the applicable laws and regulations of the country of production, unless otherwise agreed.

Our obligation to respect all agreed specifications and other agreed requirements remains unaffected.

2. We are committed to compensate the Buyer for damages caused by delay. However, there shall be no right of recovery for loss of profit and damages resulting from interruption of business. In case of minor negligence damages shall be limited to additional freight costs and additional assembly costs or to the additional costs resulting from purchases from alternative sources in the event we fail to meet an extended term or if the Buyer's interest in the delivery has become frustrated. No. 6 below remains unaffected.
3. Buyer has to check all incoming products at least on identity, completeness of delivery and packaging damages. Additional requirements, for example due to IATF 16949 clauses 4.4.1.1, 8.4.2.2 and 8.4.2.4, if applicable, shall remain unaffected.
4. All warranty claims in case of defects of the delivered goods are based on a non-fulfillment of the agreed specifications and other agreed requirements ("non-conformity"). The burden of proof lies with the Buyer. Claims for non-conformity shall be excluded if the non-conformity remained unknown to the Buyer as a result of gross negligence. They shall lapse no later than 36 months after the passage of risk, or in case of work performance 48 months after the final acceptance.

5. In case of non-conformity and provided the Buyer has observed no. 3 above (check of incoming products and notification of deficiencies), he is entitled to claim the following:
 - a) Before start of production (processing or fitting) we shall first be given the opportunity to sort out as well as rework or replace the defect goods unless this cannot reasonably be expected from the Buyer. In case we are unable to accomplish the afore-stated or in case we do not conform to it without undue delay, the Buyer is entitled to rescind the contract to this extent and return the products at our risk. In urgent cases the Buyer may, after consultation with us, accomplish the rework himself or have it done by a third party. Any costs resulting therefrom shall be borne by us. In the case the same products are repeatedly supplied in a defective condition, the Buyer shall be entitled to rescind the contract also with respect to the products not yet supplied if, upon written notification, we have again delivered defective products.
 - b) In the event the defect is discovered only after start of production, then the Buyer is entitled to claim after-fulfillment and indemnification for cost of transport (without towing cost) as well as cost of dismantling and installation (cost of labor; cost of material only if agreed upon), which are required for the after-fulfillment, or to reduce the sales price.
 - c) If in addition to the delivery of defective products we have violated culpably further contractual obligations (e.g. obligations of information, consultation, or examination), the Buyer can claim indemnification according to no. 6 below for the consequential harm caused by the defect. This consequential harm caused by a defect is determined by the damages which the Buyer suffered from the delivery of defective products at other objects of legal protection.
6. We shall be liable for damage directly or indirectly caused to the Buyer as a result of delay, non-conformity or for any other legal reason, attributable to us, only according to the following.
 - a) A liability for compensation does, in general, only exist in case the supplier was at fault when causing the damage. Also, all damages must be proven; contractual penalties, flat rates, administration fees and the like are not applicable.
 - b) In case the Buyer is liable under law, without any fault on his part, which liability cannot be excluded with regard to third party claimants, then we shall hold the Buyer free and harmless of any claim to the extent he would himself be liable directly.
 - c) Any liability shall be excluded to the extent the Buyer has on his part effectively excluded any liability in relation to his customer. In doing so the Buyer shall attempt to stipulate limitations of liability on behalf of us to the extent legally possible.
 - d) Any claims of the Buyer shall be excluded inasmuch as the damage is caused by the non-observance of operating, service and installation instructions, to unsuitable or inappropriate use, to incorrect or careless treatment, normal wear and tear or incorrect repair.

- e) The amount of damages to be paid by us according to nos. 2, 5 and 6 above shall be determined by having due regard to our economic situation, nature, scope, and duration of the business relationship, possible causative or responsible contributions by the Buyer, and a particularly disadvantageous situation of installation of the product supplied. Especially damages, cost and expenditures which shall be paid by us always have to be in an appropriate relationship to the value of the product being delivered.
 - f) If the Buyer intends to assert a claim against us according to the afore-stated provisions, he shall forthwith consult and comprehensively inform us. He shall give us the opportunity to investigate the damage occurred. The Buyer and we shall agree upon the steps to be taken, especially in the case of negotiations for a settlement.
7. We do not grant the Buyer a general right to audit and financial review. Audits and financial reviews need to be agreed separately.
 8. We retain ownership of all products supplied by us and tools manufactured or procured by us until they have been paid for in full. In this regard all shipments shall be considered as part of one continuous supply transaction.
 9. Service parts will be provided at production prices (not including special packaging) for a minimum order and delivery quantity of a reasonable lot size for 5 years after EOP. At the end of the 5 years period, we will provide Buyer with the opportunity of a "one time" buy for the remainder of the service part life.
 10. We are entitled to set-off payments against counter-claims. Also our statutory retention rights shall remain unaffected.

Any cancellation rights shall be given only after the expiry without result of a period specified for relief or after a warning notice without result. Specifying a period for relief and issuing a warning notice may be dispensed, e.g. if special circumstances are given which justify immediate termination. All contracts and agreements can be terminated by both sides with 6 month notice in writing to the end of any calendar month.

All future negotiations and all agreements and deliveries will be subject to these remarks and exemptions.

Yours sincerely,

Vogelsang Corporation