

# General Terms of Conditions of Delivery and Service

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VOIT





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## General Terms of Conditions of Delivery and Service

of VOIT Automotive GmbH (hereinafter referred to as: VOIT)

for exclusive use with entrepreneurs who, on conclusion of the contract, are acting in their commercial or independent professional activity (hereinafter referred to as: the Customer).

### 1. Scope of Applicability

The legal relationships resulting from the contract between Voit and the Customer, of which the subjects are the procurement of goods and/or services or performance of work by Voit for the Customer (hereinafter referred to as: Procurement of goods, services and/or performance or work individually and jointly also as: subject of the contract) shall be based on these General Terms and Conditions of Delivery and Service from Voit. Any inclusion of the Terms and Conditions of Business of the Customer, in particular of his Terms and Conditions of Purchase, is therefore not applicable.

### 2. Offers from VOIT Automotive

The offers from Voit in which Voit offers goods, services or performance or work and which are referred to as "subject to change", shall not be binding for Voit but rather, are to be understood as an invitation to the Customer to make an offer to Voit for the conclusion of a contract. The contract shall come about if Voit accepts the offer from the Customer.

### 3. Prices and Conditions of Payment

3.1 Unless otherwise agreed, the prices which apply at the time when the contract is concluded in accordance with the general price list of Voit shall be decisive. These shall be understood to be in euro excluding shipping and packaging costs and the relevant statutory value added tax in each case.

3.2 The invoices issued by Voit are payable net cash within 30 days after the date of the invoice. A payment is considered to have been received when Voit has the invoiced amount at its disposal. The granting of a cash discount deduction requires a special agreement with regard to the discount rate and period within which payment must have been received by Voit. In those cases where a cash discount deduction has been agreed with the customer, a discount will only be granted if all invoices whose date of issue is more than 45 days before, have been settled at the point in time of the payment of the invoice to which the cash discount deduction refers.

3.3 In the absence of another agreement, 30% of tooling costs shall be due on placement of the order, 60% on presentation of samples and 10% on approval of the samples.

### 4. Legal Effects of Information on Product Properties, of Patterns and Samples

4.1 Information regarding the properties and durability as well as other information regarding the technical specification only constitute guarantees if they have been agreed and identified as such.

4.2 Patterns and samples as well as their attributes, which Voit put at the disposal of the Customer before the conclusion of the contract or afterwards, only constitute binding information by Voit with regard to properties if they have been agreed as properties with the Customer.

4.3 Information and details from Voit about the suitability and utilisation of goods, work or services and the result of work, which are related to the handing over of goods and/or performance of services and/or work, do not release the Customer from the necessity for his own checks as to the suitability and utilisation.

### 5. Rights of the Customer and of Voit to Tools, Press Moulds, Dies and Models

5.1 All tools, press moulds, dies and models (also referred to hereinafter as manufacturing equipment) which Voit manufactures, shall remain the property of Voit. If Voit and the Customer agree on participation by the Customer in the manufacturing costs, Voit shall remain the sole proprietor in the absence of any separate agreement. If the Customer and Voit agree that the Customer will bear the total production costs for a piece of manufacturing equipment, ownership of this piece of manufacturing equipment shall pass to the Customer when complete payment of the production costs has been carried out. As long as Voit is the owner of the manufacturing equipment, Voit shall keep the manufacturing equipment free of charge until the end of the particular order. When the order has been completed, Voit has the right to give up ownership of the manufacturing equipment. Before giving up ownership, Voit must offer the Customer the manufacturing equipment for purchase. The purchasing price is the cost of production minus advance payments made by the Customer. The offer is to be made in writing with a period for making a declaration of at least 14 days. If the Customer declines the offer, Voit shall have the right to destroy the objects or to sell them. In this case, the Customer is to be reimbursed by the amounts which the Customer paid to Voit for the cost of manufacturing.

5.2. In so far as the Customer puts manufacturing equipment at Voit's disposal, it is to be sent to Voit free of charge. Voit can request that the Customer takes back such manufacturing equipment at any time; if the Customer does not respond to such a request within three months of receiving the request, Voit has the right to send the items back to him at his expense. Unless a special agreement has been made, Voit is not obliged to check whether the manufacturing equipment which the Customer has put at its disposal as to whether it is in proper technical order, correctly designed and suited to the manufacturing purpose. In particular, without any special agreement, Voit is not obliged to check compliance of the manufacturing equipment put at its disposal with drawings or patterns. The manufacturing equipment of the Customer shall be treated with the same care which Voit generally takes in dealing with its own affairs. If requested by the Customer to do so, Voit is obliged to insure the manufacturing equipment at the Customer's expense.

## ■ 6. Rights of Voit and of the Customer to Cost Estimates, Drawings and other Documents, Standard Software and Firmware

6.1 Voit shall maintain its rights of utilization to proprietary rights and rights protected by copyright without limitation regarding cost estimates, drawings and other documents. Cost estimates, drawings and other documents which are related to the subject of the contract may only be made available to third parties if Voit has previously granted its permission and are to be handed back to Voit immediately, on request. The Customer shall retain his proprietary rights, rights protected by copyright and rights of utilisation, without limitation, to documents of the Customer even after these have been put at Voit's disposal. However, Voit may grant such third parties access to these documents which Voit has permissibly involved in the fulfillment of his obligation to perform delivery and service according to the agreement made with the Customer.

6.2 The Customer has the non-exclusive right to use the standard software and firmware of Voit with the agreed performance characteristics in unmodified form on those appliances which are to be delivered by Voit in accordance with the existing contract with the Customer. The Customer is not permitted to make any back-up copy of the standard software unless explicit permission to do so has been granted. Furthermore, he is not entitled to duplicate the software unless explicitly permitted by Voit to do so.

## ■ 7. Infringement of Property Laws of Third Parties, Exploitation of Property Laws of the Customer by Voit

7.1 In the case of infringement of the property rights of third parties for which Voit is responsible, Voit can, at its own discretion, either obtain an adequate right of utilisation at its own expense for the agreed or presupposed use and can transfer this to the Customer or make an offer to the Customer to change the contract so that the property right is not infringed or so that the goods which have been delivered must be exchanged. The Customer is obliged to accept the offer if there is no adverse effect on the use of the subject of the contract by the Customer as a result of the change or exchange. If this is not possible for Voit or if Voit refuses this reaction to infringement of the property rights of third parties, the Customer is entitled to statutory claims and rights. For claims for damages and reimbursement of expenses, paragraph 13 applies. If the customer does not accept the offer to change or exchange from Voit, even though, according to the provisions above, he is obliged to do so, Voit shall have the right to withdraw from the contract.

7.2 If deliveries are carried out in accordance with drawings or other information from the Customer and if the property rights of third parties are thus infringed upon, the Customer shall release Voit from all claims.

7.3 Licence entitlements of the Customer based on industrial property rights to models which have been scanned in or to manufacturing facilities produced or procured by assignment of the Customer are exempted in so far as these are utilized by Voit in accordance with the agreement made with the Customer.

## ■ 8. Partial Deliveries

Partial deliveries are permitted in so far as these are reasonable for the Customer.

## ■ 9. Retention of Title

If the subject of the contract with the Customer is the manufacture and/or delivery or an item by Voit, the following applies:

9.1 Voit shall retain ownership of the subject of the contract until payment has been received (so-called simple retention of title).

9.2 If the customer has paid the purchasing price for the delivered and/or manufactured item, but further accounts payable from other obligations between Voit and the Customer have not yet been paid in full, Voit shall, in addition, retain ownership of the manufactured and/or delivered items until complete payment of all accounts payable has been carried out (so-called extended retention of title).

9.3 If any joining or mixing of the goods delivered by Voit with an item of the customer is carried out in such a way that the item of the customer is considered to be the main item, it shall apply as agreed, that the Customer shall transfer co-ownership of the item to Voit and shall do so in proportion to the invoice value of the goods delivered by Voit to the invoice value or, in the absence of such, to the market value of the main item. The Customer shall thus keep safe the solely owned or co-owned property, free of charge, for Voit.

9.4 At Voit's request, the Customer must provide all the required information about the existence of the goods which are Voit's property. In the same way, the Customer must identify the items which are Voit's property as such if requested by Voit to do so.

9.5 In the case of default of payment by the Customer, Voit shall have the right, after issuing a reminder, to demand that the subject of the contract be handed over and the Customer is obliged to hand it over.

9.6 Due to the retention of title, Voit can only reclaim the subject of the contract if Voit has previously withdrawn from the contract.

9.7 As long as the subject of the contract has not yet been paid in full, the Customer must keep it in trust for Voit and separate from his own property and the property of third parties and store, secure and insure the reserved property correctly and identify it as property of Voit. Until the subject of the contract has been paid in full, the Customer may neither use it nor resell it. The Customer is not entitled to dispose of the reserved property otherwise (e.g. transfer by way of security, pledging).

9.8 In the case of seizure or other intervention by third parties, the Customer must inform Voit immediately so that Voit can take legal action according to § 711 of the German Code of Civil Procedure (ZPO). If the Customer does not fulfill this duty, he shall be liable for any damages incurred.

9.9 Voit shall commit itself to release securities to which it is entitled at the request of the Customer in so far as the realisable value of the securities exceeds the receivables to which Voit is entitled. Voit shall select the securities which are to be released.

## 10. Periods of Delivery and Service

10.1 Adherence to delivery and service deadlines requires the timely receipt of all documents to be supplied by the Customer, all necessary approvals and releases, in particular of plans, by the Customer. The dates agreed between Voit and the Customer are decisive. If these prerequisites are not fulfilled on time, the deadlines shall be extended by the period between agreed time of submission until receipt by Voit; this does not apply if Voit is responsible for the delay.

10.2 Voit shall inform the Customer as soon as possible if delays start to become apparent. In any case, Voit shall transfer any claims against its supplier to which Voit is entitled due to delivery which is not in compliance with the contract, in so far as this is permitted by law. Any claims by the Customer against Voit for damages or reimbursement of expenses are excluded in so far as Voit is not to blame for the delay in delivery. The proviso in this paragraph shall be dispensed with if Voit is to blame for the delayed delivery.

If the failure to adhere to deadlines is as a result of force majeure e.g. mobilisation, war, revolt or similar events such as strike, lockout, the deadlines shall be extended adequately by the duration of event which caused the non-adherence to the deadline and by the period which is required for Voit to fulfill its delivery commitments towards the Customer taking the circumstances of the individual situation into account. The same applies in the case of unpunctual or incorrect supply to Voit itself.

10.3 Unless stated otherwise in the provisions above, for the rest, the Customer is otherwise only entitled to enforce damage claims in the case of a delay in delivery or service as detailed in the proviso in accordance with the regulation under paragraph 13.

10.4 The Customer can withdraw from the Contract without giving notice if it becomes impossible for Voit to carry out complete performance before the transfer of risk. Furthermore, the Customer can withdraw from the Contract if, in an order, execution of part of the performance becomes impossible and he has a legitimate interest to refuse the partial delivery. If this is not the case, the Customer has to pay the contractual price which is allotted to the partial delivery. If the impossibility occurs during the default of acceptance by the Customer or if the Customer is responsible for these circumstances, he remains obliged to provide a return for services.

## 11. Modalities of Delivery and Transfer of Risk, Applicability of Incoterms

11.1 Delivery shall be carried out according to the stipulations of the trade clause laid down in the individual contract for the interpretation of which Incoterms shall be decisive in the relevant version when the contract was concluded in each case.

11.2 If the individual contract does not contain a trade clause, delivery shall be carried out EXW ex works Incoterms 2010.

## 12. Rights of the Customer in Case of Defects

12.1 Defects in the goods, services or performance of work must be objected to in writing giving information regarding the type and extent of the defects.

12.2 If the goods, service or performance of work is defective and if the Customer has informed Voit of this correctly, the Customer is entitled to statutory rights with the following provision:

12.2.1 Voit initially has the right, at their discretion, to either eliminate the defect or to provide the Customer with goods or the performance of services or work without defects (subsequent performance).

12.2.2 Voit reserves the right to two attempts at subsequent performance. If the subsequent performance should fail or be unreasonable for the Customer, the Customer can either withdraw from the Contract or request a reduction in the agreed payment.

12.2.3 For claims for damages and reimbursement of expenses incurred in vain due to a defect, paragraph 13 applies.

12.3 Warranty claims of the Customer shall be subject to a time limitation of one year from the beginning of the statutory limitation period. This does not apply in the following cases:

12.3.1 in the case of liability of Voit due to intent;

12.3.2 in the case of defects which Voit, its institutions and/or servants maliciously concealed or the absence of which was guaranteed by Voit, its institutions and/or servants;

12.3.3 for claims against Voit due to deficiency in goods, performance of service or work, if used in a building according to the customary manner of utilization and which thus caused any deficiency therein;

12.3.4 for claims regarding damages to life, body or health which result from a deliberate or negligent breach of duty by Voit, by one of its institutions or one of the servants of Voit;

The statutory period of time limitation applies in the cases 12.3.1 to 12.3.4 listed above.

## 13. Liability

13.1 Voit shall be liable for damages – on whatever legal grounds, only

- in cases of intent or gross negligence on behalf of Voit, its institutions and/or servants;
- in the case of culpable breach of cardinal duties even in the case of ordinary negligence, but limited to contractually typical, reasonably foreseeable damages; cardinal duties are such duties whose fulfillment is made possible in the first place by the correct execution of the contract and which the Customer can normally have confidence that they will be fulfilled;
- in the case of damages to life, body or health based on an intentional or negligent breach of duties by Voit, a legal representative or servant of Voit;
- in the case of defects which Voit maliciously concealed or the absence of which Voit has guaranteed;
- in the case of defects in the subject of the contract in so far as there is liability under the German product liability act for damages to persons or property on privately used objects.

13.2 In so far as the customer is entitled to claims against Voit for damages, these shall be subject to a time limitation of 12 months after the start of the statutory time limit. This does not apply in the following cases:

- 
- i.  
in the case of intent by Voit, its institutions and/or servants,
  - ii.  
in the case of defects which Voit, its institutions and/or servants maliciously concealed or the absence of which Voit, its institutions and/or servants have guaranteed;
  - iii.  
in the case of defects in the subject of the contract, in so far as there is liability under the German Product Liability Act for damages to persons and or property on privately used objects,
  - iv.  
for claims against Voit due to deficiency in goods, performance of service or work, if used in a building according to the customary manner of utilization and which thus caused any deficiency therein.

In the cases 13.2, i to iv listed above, the statutory time limitation applies.

#### ■ 14. Offsetting

The Customer can only offset against claims by Voit with an undisputed or legally ascertained counterclaim.

#### ■ 15. Place of Fulfilment

The place of fulfillment is the domicile of VOIT Automotive.

#### ■ 16. Place of Jurisdiction

In the case of legal disputes, the District Court of St Ingbert and the Regional Court of Saarbrücken shall be locally, exclusively responsible within the scope of their competence.

#### ■ 17. Prohibition of Assignment

The Customer is only permitted to assign claims against Voit resulting from the contractual relationship to third parties if Voit has granted permission to do so.

#### ■ 18. Applicable Law

The contractual relationship is subject to the law which is applicable at the domicile of Voit.