

Article 1 Scope

1. These general conditions apply to all offers, contracts and deliveries from and with Vesper AG, a limited liability company incorporated under Swiss law (hereinafter also referred to as "Vesper") and any other party unless explicitly agreed upon otherwise in writing.
2. "The customer" is a natural or legal person who is a customer of Vesper.
3. "Products" are all tangible goods, products and services supplied by Vesper to the customer.
4. Any purchasing, or other, terms and conditions of the customer are not applicable unless they have been explicitly accepted in writing by Vesper.
5. Vesper has the right to transfer any rights derived from an agreement with the customer to any of its subsidiaries. These general conditions then also apply.

Article 2 Offers and acceptance

1. All offers made by Vesper are non-binding and based upon the market prices and conditions at that particular moment.
2. If the customer shows interest in the offered products and or goods a sales agreement comes into existence at the moment both parties agree upon the price and other conditions and these conditions are confirmed in a written confirmation notice by Vesper.
3. If no remarks are made within one 24 working hours after the confirmation notice is sent to the applicable e-mail address of the customer, the sales contract is irrevocable.
4. Notwithstanding the provisions in article 2.2 and 2.3 no sales agreement will come into existence if Vesper has requested for a payment security unless the asked security is given by the customer, regardless of the requested form of this security.

Article 3 Quantity and weight of the products

1. Vesper has a best efforts obligation (inspannings-verplichting) to deliver the agreed upon quantities.
2. In addition to the provisions in article 2 Vesper will have met its obligations to the customer if the supplied quantity of the product does not divert more than 20% from the ordered quantity. The actual supplied quantity (either in weight or number) is invoiced at the agreed price.
3. Scale weight difference of 5% of total weight is within the accepted tolerance.

Article 4 Packaging, transportation and delivery

1. The applicable conditions for delivery of the products are mentioned in the confirmation notice. INCOTERMS 2010 apply to all deliveries.
2. If a delivery is made in parts, each delivery must be regarded as a separate transaction with all the legal consequences attached to it.
3. Delivery periods are fixed by approximation, unless expressly agreed otherwise. The delivery period begins at the moment when the agreement is confirmed with a confirmation notice as mentioned in article 2.2. Notwithstanding if the customer has the obligation to provide Vesper all necessary data for the delivery, but has not yet provided this data, the delivery period will not commence. The customer is in that situation liable for all damages and costs incurred by Vesper due to the failing of the customer to provide the necessary data.
4. Vesper has a best efforts obligation (inspannings-verplichting) to deliver the products as close to the estimated delivery date as possible. If Vesper has not met the delivery date this will not give the customer, the right to cancel or dissolve the agreement.
5. The customer has the right to dissolve or cancel the unperformed part of the agreement if the agreed delivery date is exceeded with more than three months. The customer has to inform Vesper immediately in writing if he wants to exercise this right.
6. In case the customer refuses to accept the delivery (either entirely or partly) of the products then Vesper has the right to immediately (without judicial intervention and without any notice of default) cancel or dissolve the agreement. If Vesper exercises the before mentioned right this does not limit or replace Vesper's right to full compensation.
7. The copy of the consignment note, carriage document, CMR or other form of receipt signed by or on behalf of the carrier and the customer, respectively, counts as a proof that the products listed on it have been delivered complete and in good (external) condition on the in the document specified date, unless a note has been made on the carriage document.
8. The goods are supplied in a suitable packaging for the agreed carriage.

Article 5 Quality of the products

1. Vesper has a best efforts obligation (inspannings-verplichting) to supply products to the customer that meet the in the confirmation notice specified specifications.
2. The products sold by Vesper are derived from or are recyclable materials which means divergences in color, composition, moisture, hardness, vulcanization rate, mooney, tensile strength, packaging etc. will occur. The customer is aware that due to the nature of the products sold by Vesper these differences can and will occur. As a result, the customer cannot derive any rights and/or price reductions from these divergences.
3. The customer shall examine the products or cause them to be examined immediately on receipt. The customer shall notify Vesper in writing of any lack of conformity of the products, specifying the nature of the lack of conformity, within 2 working days after the customer has discovered or ought to have discovered the lack of conformity.
4. In any event, the customer loses the right to rely on a lack of conformity if he fails to notify Vesper thereof at the latest within a period of 7 days from the date on which the products were delivered to the customer in writing.
5. If the customer has given due notice of non-conformity to Vesper and completed the required Claims Form, a fitting solution will be found for all parties. However, this does not allow the customer to make any deduction from invoice payments, Claim Management is to be handled separately from invoicing.

Article 6 Payment conditions

1. The customer has the obligation to pay Vesper the agreed price for the delivered products. The agreed price is specified in the applicable confirmation notice without any deductions unless agreed in writing by both parties. Payment to be made to account shown on Invoice – payment is made to any other account and funds have not been received by Vesper – Invoice will be considered unpaid.
2. Unless explicitly stated otherwise all prices are in Euro and excluding VAT.
3. All payments must be made in accordance with the manner of payment agreed between the parties and within the agreed periods stated in the confirmation notice.
4. If no payment period is agreed upon the Dutch legal payment period of 30 days from the invoice date applies.
5. Vesper will provide the customer with an invoice in which the amounts to be paid for the applicable products are specified.
6. All payments must be made by bank and in the agreed currency.
7. If the customer disputes all or part of an invoice, he must notify Vesper thereof in writing, stating its precise reasons, within 5 days of the invoice date. The customer's right to dispute the invoice lapses after this period. The burden of proof in relation to having disputed the invoice in due time lies with the customer. Disputing the invoice does not release the customer from its payment obligation.

8. The customer is not entitled to set off the invoice amount, whether disputed or otherwise, against any rightfully or wrongfully contended counterclaim and/or to suspend payment of the invoice.
9. Any charges or costs charged by the customer's bank must at all times be paid for by the customer in full and cannot in any way be deducted from the invoiced amount.
10. If Vesper is of the opinion that the customer's financial position and/or payment record gives cause thereto, the customer must make an advance payment and/or furnish adequate security, by means of a bank guarantee, pledge or otherwise, for its obligations towards Vesper at the latter's written request. Security may be requested for both existing and future obligations. An advance payment may only be requested for future obligations. The extent of the requested security and/or advance payment must be proportional to the extent of the customer's relevant obligations.

Article 7 Retention of ownership

1. Vesper remain the owner of all products supplied to the customer until such time payment has been received in full from the customer. The goods shall remain the property of Vesper and the customer shall store them so that they are readily identifiable as Vesper's goods, until such time as payment for them and for all other goods agreed to be sold to the company had been received in full. As a result of the preceding the customer is explicitly not allowed to process the products into other products.
2. If the goods have been resold, Vesper's beneficial entitlement shall be attached to the proceeds of the re-sale and will be able to claim the full purchase price of the proceeds received.
3. Where ownership of any goods remains vested in Vesper, Vesper shall be entitled to repossess any goods supplied at any time, though explicitly in the situation the customer non-performs, is declared bankrupt or is granted a moratorium on payments. Vesper may for the purpose of recovering its goods enter upon any premises where they are stored or where they are reasonably thought to be stored and may repossess the same.
4. It is the sole responsibility of the customer to ensure that all products received from Vesper are fully insured against any eventuality including, but not limited to, fire, theft, flooding, etc, until such time ownership of said products has passed to the customer. If products become damaged in any way after they have been received by the customer, the customer will be liable to pay to Vesper the full purchase price of the products.

Article 8 Non-performance of the customer

1. If the customer fails to pay the invoiced amount at the agreed time, Vesper shall fix to the customer an additional period of time of 3 days for performance of payment.
2. If the customer does not pay the invoiced amount at the agreed time the customer will be in default by operation of law from the first day after expiry of the payment period and liable to pay interest 12% p.a. on the outstanding amount. Part of a month will be calculated as a full month for this purpose. The copy of the invoice sent to the customer that is in the possession of Vesper will serve as full proof that interest is payable and of the date on which the interest calculation commences
3. If after the in article 8.1 mentioned period the customer is still in default than all other invoices, in deviation of the provisions in article 6.3, will become immediately due and payable.
4. All judicial and extrajudicial collection costs, as well as any reversal charges that Vesper incurs due to the failure of the Buyer to fulfil its obligations under this agreement, will be payable in full by the customer. The payment in respect of extrajudicial costs is fixed at 15% of the outstanding principal sum including VAT and interest (subject to a minimum of € 250 per claim), unless Vesper has demonstrably incurred more costs. The fixed amount will always be due by the customer as soon as it is in default and will be charged without further proof.
5. In the case of non-performance by the customer as mentioned in article 8.1 Vesper has the right to cancel or dissolve the contract without judicial intervention and without a notice of default. If Vesper exercises the before mentioned right this does not limit or replace Vesper's right to claim full compensation for damages, loss of profits, interests and costs.

Article 9 Liability

1. Vesper's liability as a result of a defect which is attributable to a good or product supplied by Vesper is at all times limited to the net invoice value of the goods or products in question except in the event of gross negligence or intention on the part of Vesper.
2. Notwithstanding the provisions in article 9.1 Vesper will not be liable for costs, damages and interest, which the customer or third parties may incur as a direct or indirect result of negligent acts by employees of Vesper or of shortcomings in goods or products supplied or advice given by Vesper. In no case Vesper is liable for operating losses meaning specifically material damage to or down time of processing machinery. Vesper also excludes all liability for consequential damage caused by product or goods supplied. Nor does the customer have any right to compensation for any secondary damage or for damage arising from delay or the impossibility of replacement delivery.

Article 10 Confidentiality, Publicity

1. Vesper and the customer shall keep as confidential the commercial and technical information mutually disclosed as part of their trading relationship.
2. Both Parties may not, without previously obtain the other party's written consent, carry out any advertisement or publicly reveal any facts of their co-operation.
3. Vesper may disclose directly or indirectly contact details of its suppliers to the customer. It is forbidden for the customer or any other organization, company or person affiliated to the customer to directly or indirectly engage in direct trading relations with these suppliers for the period of two years after the last delivery of products or goods to the customer by Vesper.
4. A penalty of EUR 50.000 shall be forfeited by the customer to Vesper for each violation of this provision and an additional penalty of EUR 5.000 for each consequent day that the customer acts in violation of this provision.

Article 11 Force Majeure

1. A Party shall not be liable in the event of non-fulfilment of any obligation arising under this contract by reason of Act of God, disease, strikes, lock-outs, fire and any accident or incident of any nature beyond the control of the relevant party.

Article 12 Governing Law

1. These general conditions and the obligations deriving from it are exclusively governed by Dutch Law.
2. The terms of the United Nations Convention on Contracts for the International Sale of Goods (CISG) are hereby expressly excluded
3. All disputes arising from or in relation to a legal relationship between the parties to which these general conditions apply, will be exclusively settled in the first instance by the competent court in Rotterdam, The Netherlands.

Article 13 Final provision

1. If one or more provisions of this general conditions are invalid or declared void, the general conditions and the individual confirmation notices will remain in force in all other respects. The provisions that are invalid or cannot be legally enforced will be replaced by provisions that approximate the purpose of the provisions to be replaced as far as possible.