

# TERMS OF DELIVERY, SERVICE AND PAYMENT



VULKAN Kupplungs- und Getriebebau Bernhard Hackforth GmbH & Co. KG (hereinafter referred to as „VULKAN“)  
Heerstraße 66 | 44653 Herne | Germany

## SECTION 1 APPLICATION OF THE TERMS OF DELIVERY AND SERVICE

- The Terms of Delivery and Service below apply to all deliveries and services provided by VULKAN (in the national and international course of business) to companies, legal persons under public law, as well as separate estates under public law (hereinafter: „PRINCIPAL“), even if they are not specifically referenced in later contracts. Any contradictory provisions that are either supplementary or contrary to these Terms of Delivery and Service, in particular PRINCIPAL'S conditions of purchase, shall only become part of the contract if they are expressly agreed upon in writing. These Terms of Delivery and Service apply even if VULKAN delivers to PRINCIPAL without reservation, fully aware of its contradictory or deviating terms.
- Any master agreements concluded between the parties shall have priority. Unless specific provisions are made, they are appended by these Terms of Delivery and Service.

## SECTION 2 CONCLUSION OF CONTRACT / OFFERS

- Offers and cost estimates prepared by VULKAN are subject to change without notice and are non-binding unless they are specifically referred to as binding. The written form requirement itself may only be waived by written agreement.
- Offers made by VULKAN are subject to change without notice.

## SECTION 3 PRICES, PAYMENTS, SHORTFALL QUANTITIES, SAMPLES

- The deliveries and services are provided at the prices and conditions stated in VULKAN'S order confirmation. The prices stated therein are binding.
- The prices are from the VULKAN plant (ex works). Added to them is the value added tax applicable at the time of invoicing.
- A commensurate flat fee applies to the processing or delivery of samples or shortfall quantities.
- Unless otherwise agreed upon in writing, all invoices are payable within 30 days without discount. Payment is deemed as rendered when VULKAN is able to dispose of the amount.
- In the event of a late payment, default interest in a commensurate amount but at least, at the discretion of VULKAN, in the amount of the customary banking or statutory interest (Sec. 288, 247 of the German Civil Code (Bürgerliches Gesetzbuch - BGB)) becomes payable. The assertion of further damages remains reserved. If VULKAN decides to accept bills of exchange, this is only done on account of performance and not instead of performance. VULKAN has the right to revoke the forbearance provided by the acceptance of the bill of exchange at any time and demand immediate payment. If bills of exchange are accepted, the bank's discounts and collection charges are calculated from the date the invoice expires and are immediately payable in cash.
- Any counterclaims PRINCIPAL may have will only entitle PRINCIPAL to a set-off and the assertion of a right of retention, if they were upheld by a court of law or if they are undisputed. PRINCIPAL may only assert a right of retention, if its counterclaim is based on the same legal relationship.
- VULKAN is entitled to execute any outstanding deliveries or services only in return for payments in advance or the provision of security, if circumstances become known after the conclusion of the contract that may significantly decrease Principal's creditworthiness and which endanger the payment of open receivables of VULKAN by PRINCIPAL relating to the respective contractual relationship. This shall apply accordingly, if PRINCIPAL refuses to pay the outstanding receivables of VULKAN, or if they do not arise while already in default. In important cases, VULKAN will inform PRINCIPAL of the beginning and end of these types of impairments as soon as possible. No default compensation is due in the event of delivery delays of less than two months due to the aforementioned circumstances. If compensation must be paid, the following applies:
- If PRINCIPAL incurs damages due to a delay caused by VULKAN, PRINCIPAL shall be entitled to demand default compensation to the exclusion of further claims. For each full week of delay, it amounts to 0.5%, but at the most 5%, of the value of the part of the overall delivery that cannot be used contractually or in a timely manner due to the delay.
- If shipment is delayed at PRINCIPAL'S request, PRINCIPAL shall be charged, beginning one week after the notification that shipment is ready, for any storage costs incurred, and if stored at the VULKAN facilities, at least 0.5% of the invoice amount for each month started. The parties have the right to assert further damages or to show lower damages. In any event, however, VULKAN is entitled to otherwise dispose of the object of delivery after the unsuccessful expiry of a reasonable period of time and to deliver to PRINCIPAL with an appropriately extended delay. VULKAN has the right to assert further claims, in particular

rights pursuant to Sec. 293 et seqq. (304) BGB, taking into account any payments made by PRINCIPAL. The same applies to its rights pursuant to Sec. 280 et seqq. BGB and for the fulfilment claim.

- Observance of the period of delivery requires fulfilment of the contractual obligations of PRINCIPAL.

## SECTION 4 PERIOD OF DELIVERY

- Periods of delivery must be agreed upon in the written form. Periods of delivery are non-binding, unless they are expressly specified as binding.
- The period of delivery begins when the order confirmation is mailed, but not prior to the provision of the items, documents, permits, authorisations and the receipt of a down payment that was agreed on and the timely and proper fulfilment of any other participatory actions by PRINCIPAL. If components to be provided by PRINCIPAL are not provided at the time agreed upon or not in a defect-free manner, the period of delivery is extended by one month for each started month plus another month.
- The period of delivery is met if the object of delivery has left the plant by the time it expires, readiness for delivery has been communicated, or PRINCIPAL has announced that acceptance will be refused. The delivery is subject to a timely and proper delivery to VULKAN.
- The period of delivery is reasonably extended in the event of labour disputes, in particular a strike or lock-out, or if unforeseen impairments arise that are beyond the control of VULKAN, provided such events, if it can be proven that such impairments significantly influence the completion or delivery of the object of delivery. This applies as well if these circumstances arise in connection with subcontractors or suppliers. VULKAN is not responsible for the aforementioned circumstances, even if they occur during a default that is already in existence. In important cases, VULKAN will inform PRINCIPAL of the beginning and end of these types of impairments as soon as possible. No default compensation is due in the event of delivery delays of less than two months due to the aforementioned circumstances. If compensation must be paid, the following applies:
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- Observance of the period of delivery requires fulfilment of the contractual obligations of PRINCIPAL.

## SECTION 5 RISK TRANSFER AND ACCEPTANCE

- Deliveries and returns are made from the VULKAN plant (ex works) and at the expense and risk of PRINCIPAL. The risk of accidental loss or accidental deterioration transfer to PRINCIPAL at the latest when VULKAN makes the goods available at the place of delivery or hands them over to the shipper. This applies as well when partial deliveries are made or VULKAN has assumed other costs or services such as shipping costs or delivery and/or installation. At the request of PRINCIPAL, VULKAN will insure the shipment at PRINCIPAL'S cost against theft, breakage, transport, fire and water damage, as well as against other insurable risks.
- If the shipment is delayed for circumstances that are in the sphere of responsibility of PRINCIPAL, the risk transfers to PRINCIPAL from the date on which readiness for shipment has been reported; VULKAN is, however, required to obtain the insurances requested by PRINCIPAL at the request and cost of PRINCIPAL.
- Notwithstanding the rights according to section 11, PRINCIPAL shall accept the objects delivered if they have minor defects. PRINCIPAL is required to accept goods, even if quantity of the goods made available deviates up to 5% or was delivered slightly ahead of schedule.
- Partial shipments are permitted.

# TERMS AND CONDITIONS OF PURCHASING OF THE COMPANY



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## SECTION 6 REFUSAL TO TAKE DELIVERY / ACCEPTANCE REFUSAL

1. If PRINCIPAL unjustly refuses to accept the contractual object, the delivery, or the service, VULKAN may set a reasonable deadline for the taking of delivery or acceptance. If PRINCIPAL has not taken delivery or accepted the contractual object within the deadline provided, VULKAN may, notwithstanding the right to contractual fulfilment, withdraw from the contract or demand damages for non-fulfilment. If VULKAN does not demand contractual fulfilment, VULKAN is, in any case, even without having to demonstrate the actual damages incurred and notwithstanding the option to assert higher actual damages, entitled to flat-rate damages in the amount of 30% of the net order value for standard goods and in the amount of 100% for customised goods that cannot be liquidated otherwise. PRINCIPAL has the right to demonstrate lower actual damages.
2. If acceptance has been agreed on or is required, VULKAN is, in any event, entitled to demand acceptance if no major defects exist any longer and operational reliability is guaranteed. Major defects are defects that challenge or significantly impair efficiency. In this case, VULKAN must propose several possible acceptance dates to PRINCIPAL. PRINCIPAL must receive the proposal at least one week prior to the prospective dates. If PRINCIPAL does not accept any of these acceptance dates proposed at least two days prior to such a date, and if PRINCIPAL does not propose any other date either that lies within two weeks from the receipt of VULKAN'S proposal, acceptance is deemed as having been declared.

## SECTION 7 RESERVATION OF TITLE

1. All deliveries and services are rendered subject to a reservation of title. Until the purchase price/fees and all other claims of VULKAN against PRINCIPAL from the ongoing business relationship have been paid in full, the goods delivered remain the property of VULKAN.
2. For the duration of the retention of title, PRINCIPAL is required to treat the goods subject to a retention of title with due care. PRINCIPAL is, in particular, required to insure the goods at sufficient reinstatement value at its own expense against damages caused by fire, water, and theft. Principal hereby assigns to VULKAN all indemnification claims from this insurance. Vulkan hereby accepts the assignment. Should the assignment not be permitted, PRINCIPAL hereby irrevocably instructs its insurer to make any payments to VULKAN only. Any further claims VULKAN may have remain unaffected. Upon request, PRINCIPAL must furnish proof that an insurance contract was concluded.
3. If PRINCIPAL processes or uses the goods by combining or mixing them with other items, the processing/use is performed on behalf of VULKAN, who is therefore considered the manufacturer as defined by Sec. 950 BGB and acquires the ownership of the intermediate or final product. When processed with other goods PRINCIPAL does not own, VULKAN acquires joint ownership of the new goods in relation to the value of the goods provided by VULKAN and the value of the third-party goods at the time of processing.
4. PRINCIPAL is revocably entitled at any time to further process the goods delivered and to relicense them in the context of the agreement made in the process of regular business operations. As a matter of precaution, PRINCIPAL hereby assigns to VULKAN all claims and ancillary rights associated with the resale and the business relationship with its customers in the amount of the value of the goods delivered. VULKAN is authorised to inform the customers of PRINCIPAL of the assignment of claims at any time. If the goods that are subject to a retention of title are sold together with goods that are not delivered by VULKAN, the claims based on the resale is assigned in relation to the value of the goods that are subject to a retention of title and the other goods sold. Should an assignment not be permitted, PRINCIPAL hereby irrevocably instructs its third-party debtors to make any payments to VULKAN only.
5. PRINCIPAL may neither pledge the object of delivery nor assign it as collateral. In the event of an attachment or other dispositions made by a third party, PRINCIPAL must inform VULKAN immediately. Should VULKAN suffer damages because the notification did not take place or was late (e.g. the loss of a right), PRINCIPAL must indemnify VULKAN accordingly.
6. Should PRINCIPAL act contrary to contract, in particular in the event of a default in payment, VULKAN is entitled to the goods following a warning and PRINCIPAL is required to surrender said goods.
7. The assertion of the retention of title as well as the attachment of the object of article of sale by VULKAN are not deemed a withdrawal from the contract unless the provisions governing consumer loan contracts (Sec. 491-498 BGB) apply.
8. VULKAN undertakes to release any security VULKAN is entitled to at the request of PRINCIPAL as far as the realisable value of the security exceeds the claims to be secured by more than 10%. VULKAN has the right to choose which security to release.

## SECTION 8 LIABILITY

1. VULKAN is fully liable, regardless on what legal grounds, in the event of a breach of a warranty or an injury to life, body, or health. The same applies to intent and gross negligence by governing bodies and executives. The liability for simple ancillary agents (Sec. 278 BGB) is excluded to the extent permitted by law.
2. Subject to section 8 no. 1, VULKAN is only liable for slight negligence if cardinal duties were breached. Cardinal duties are those without which a proper performance of the contract would not be possible and the fulfilment of which the contracting party regularly relies and may rely on.
3. Regarding the non-adherence to a period of delivery, the liability of VULKAN is, subject to section 8 no. 1, limited to 5% of the net price that was agreed on regarding damages that PRINCIPAL incurs due to the delay. The contracting parties have the right to assert further damages and to show lower damages.

## SECTION 9 PROTECTIVE RIGHTS / COPYRIGHTS / CONFIDENTIALITY ETC.

1. All rights to patents, utility and design patents, trademarks, configurations, and other protective rights as well as copyrights relating to the contractual object and services remain with the holder of the rights. This applies in particular to product designations, software, and to name and trademark rights.
2. The contracting parties undertake to treat all commercial and technical details that are not obvious and that they become privy to due to the business relationship as a business secret.
3. Drawings, tools, software, forms, devices, models, templates, samples, and similar items that are provided, used, or made available by or for VULKAN are and remain the property of VULKAN. They may not be sent to unauthorised third parties or made available otherwise. If the aforementioned objects are produced for VULKAN, they become the property of VULKAN at the time these are produced or manufactured. The duplication of such objects is only permitted in the context of operational requirements and the provisions under patent law, trademark law, copy-right and competition law.
4. The contracting parties of PRINCIPAL must be obligated accordingly.
5. PRINCIPAL may only reference the business relationship with VULKAN with prior written approval.

## SECTION 10 COLLISION WITH THIRD-PARTY RIGHTS

1. If PRINCIPAL, due to a direct infringement of protective rights, including property rights, is held responsible by third parties due to deliveries and/or services provided by VULKAN, VULKAN hereby indemnifies and holds PRINCIPAL harmless from any damages it is ordered to pay or that are specified in a settlement agreement as well as from any court and attorney fees, but only under the following conditions:
  - a) PRINCIPAL informs VULKAN immediately when being held responsible or warned by third parties, without first having taken any defensive steps and/or having contacted an attorney. Excepted from this are ad hoc steps that must be taken before VULKAN can be informed.
  - b) Only VULKAN is entitled to take defensive steps and to retain attorneys for the performance of defensive steps and/or to issue statements and/or engage in other negotiations. If so requested by VULKAN, PRINCIPAL will retain an attorney at the expense of VULKAN.
  - c) PRINCIPAL notifies VULKAN immediately and continuously about the matter and, in particular, promptly provides the necessary information and documents.
2. VULKAN is not liable if the infringement of a third-party right is based on a modification of the contractual object or parts thereof, provided the contractual object itself does not infringe any rights. Furthermore, VULKAN is not liable in the event PRINCIPAL has engaged in further acts of use after having been warned by a third party or having become aware of a potential infringement of third-party rights unless VULKAN has approved further acts of use in writing.
3. In the event that it is found by a court of law that any further use of the contractual object infringes third-party protective rights, including copy-rights, or, in the opinion of PRINCIPAL, the risk of a protective right or copyright lawsuit exists, VULKAN may, at its own cost and discretion, either provide PRINCIPAL with the right to further use the contractual object or replace the contractual object or modify it in such a way that an infringement no longer exists or that it is at least less likely. These types of steps do not entitle PRINCIPAL to assert any claims - regardless of what type - against VULKAN.

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## SECTION 11 WARRANTY

1. If the goods are defective, VULKAN will meet its warranty obligations first through rectification or replacement.
2. If the supplementary performance is unsuccessful, PRINCIPAL may either, at its discretion, reduce the compensation amount or withdraw from the contract.
3. The warranty rights of PRINCIPAL are subject to the condition that PRINCIPAL has met its statutory inspection and rejection duties (Sec. 377, 381 HGB), that PRINCIPAL has, in particular, immediately inspected the goods delivered and promptly informed VULKAN in writing of any obvious defects and defects that were found during such an inspection. PRINCIPAL must report any hidden defects to VULKAN promptly after they are uncovered. The notification is considered prompt if it is made within eight workdays. The date on which the notification is received by VULKAN is authoritative for the compliance with the notification deadline. If PRINCIPAL fails to duly inspect the goods and/or report defects, VULKAN is not liable for the defect. PRINCIPAL must describe the defects in writing in its notification sent to VULKAN. PRINCIPAL bears the full burden of proof for all claim requirements, in particular for the defect itself, for the point in time the defect was noted, and for the timeliness of the notice of defect.
4. The supplementary performance claims do not pertain to minor deviations that PRINCIPAL must tolerate.
5. Upon having communicated with VULKAN, PRINCIPAL must provide the time and opportunity required for the performance of all rectifications and/or replacements that VULKAN deems necessary; otherwise, VULKAN is released from the liability and the resulting consequences. Only in urgent cases, when the operational safety is at risk or in order to avert disproportionate damage, in the event of which VULKAN must be informed immediately, PRINCIPAL has the right to remedy the defect itself or to have it remedied by third parties and to request from VULKAN reimbursement of the expenses that were necessary.
6. If a notice of defect is made without justification, VULKAN is entitled to demand from PRINCIPAL reimbursement of the expenses that were incurred unless PRINCIPAL can show that it is not at fault for the unjustified notice of defect.
7. If the complaint is found to be just, VULKAN will bear the direct costs arising from the rectification or replacement made by VULKAN, the costs for the replacement part including shipment to the original shipping address. If the goods are not at the place of delivery, PRINCIPAL will bear all additional costs incurred by VULKAN in the remediation of the defect due to this fact, unless the relocation to another place corresponds to contractual use.
8. In all other regards, the claims of PRINCIPAL against VULKAN as a whole or regarding individual parts are limited to a right to supplemental performance. Only if the supplementary performance is unsuccessful, PRINCIPAL may either, at its discretion, reduce the compensation amount or withdraw from the contract.
9. If PRINCIPAL opts to withdraw from the contract due to a defect of title and/or material defect following failed supplementary performance, PRINCIPAL is not entitled to additional damages in connection with the defect. If PRINCIPAL opts for damages following failed supplementary performance, the goods will remain with PRINCIPAL, if this is a reasonable expectation. The damages are then limited to the difference between the purchase price and the value of the defective item. This does not apply if VULKAN caused the contractual breach in bad faith.
10. If PRINCIPAL receives defective instructions for assembly and/or operation, VULKAN is only required to provide instructions for assembly and/or operation that are free from defect, and only if the defect in the in-structions for assembly and/or operation prevents a proper assembly and/or operation. In the event of assembly and/or operating problems that are due to defective instructions for assembly and/or operation, PRINCIPAL must contact VULKAN by phone, who will then consult and assist. If so requested, VULKAN must reimburse the resulting telephone costs.
11. No liability is assumed in particular in the following cases: unsuitable or improper use, defective assembly, and in particular an assembly that is not according to the state of technology, start-up and/or improper use by PRINCIPAL or a third party, natural wear and tear, incorrect or negligent treatment, improper maintenance, unsuitable equipment, defective construction work, unsuitable subsoil, chemical, electrochemical, or electrical influences, unless VULKAN is responsible for them. No liability is assumed either for consumables, normal wear and tear as well as damage caused by an improper storage of the product, as well as for negative changes in the products that are not due to production defects, but to the natural ageing process of the products.
12. As a principle, VULKAN does not grant PRINCIPAL any warranties in the legal sense. Any warranties by third-party manufacturers remain unaffected by this.

13. Any improper changes made or repair work performed by PRINCIPAL or a third party commissioned by PRINCIPAL without the prior approval of VULKAN invalidate any liability for the resulting consequences. In these cases, VULKAN has no warranty obligation whatsoever, unless PRINCIPAL can show that the changes or repair work cannot have been the cause of the damage.
14. The warranty period begins one year from the start of the statutory limitation period.
15. The warranty period for the replacement part and rectification is six months, but it is in effect at least until the expiry of the original warranty period for the item of delivery.

## SECTION 12 PLACE OF FULFILMENT AND JURISDICTION

1. The place of fulfilment for deliveries and services as well as the place of jurisdiction for all liabilities and disputes resulting from the contractual relationship is the principal seat of VULKAN or, at its discretion, the location of its branch office responsible for the delivery/service. VULKAN may also opt to file an action at the principal seat of PRINCIPAL or at the place of fulfilment.
2. The law of the Federal Republic of Germany applies under exclusion of the United Nations Convention of Contracts for the International Sale of Goods (CISG). The contractual language is German.

## SECTION 13 WRITTEN FORM

Any side arrangements only become effective if they are made in writing. Amendments and/or addenda require the written form. This applies also to any waiver of the written form requirement.

## SECTION 14 SEVERABILITY CLAUSE

1. Should any of the provisions contained in these terms be or become invalid, or should the terms contain a loophole, this shall not affect the legal validity of the remaining provisions contained herein.
2. Instead of the invalid provision, a valid provision shall be deemed as agreed upon that comes closest to the will of the parties; the same applies in the event of a loophole.