

# TERMS AND CONDITIONS OF PURCHASE of the Viessmann Group

## I. General

- These Terms and Conditions shall apply to all affiliated companies of Viessmann Werke GmbH & Co. KG within the meaning of section 15 German Stock Corporation Act (*Aktiengesetz*) (hereinafter "**Viessmann Group**"). In the following, the company of the Viessmann Group that places the respective order in accordance with these Terms and Conditions shall be referred to as "we" or "our".
- These Terms and Conditions shall only apply in dealings with business owners, legal persons under public law and special funds under public law (*öffentlich-rechtliche Sondervermögen*).
- Unless otherwise expressly agreed in writing, these Terms and Conditions shall also apply in the event of an ongoing business relationship without a particular notice or reference to that effect, and in particular also in the event of any call-off or follow-up orders placed orally or over the telephone. These Terms and Conditions shall replace our current terms and conditions of purchase, which shall cease to be effective.
- No other general terms and conditions shall apply. The applicability of any other terms and conditions are hereby expressly objected to; there shall be no need to repeat such objection. Any silence on our part and any unconditional acceptance of the service provided or the goods delivered or their payment shall not constitute consent to the terms and conditions of the supplier.
- Should any of these Terms and Conditions be or become partially or wholly ineffective, all other provisions will remain unaffected by such invalidity.
- Unless otherwise provided for in these Terms and Conditions, the Schedule of Services and Fees for Architects and Engineers (*Honorarordnung für Architekten und Ingenieure*, HOAI), as amended from time to time, shall apply in relation to any goods or services provided by architects and technical planners.

## II. Order and order confirmation

- All orders and offers, including any sample consignments, shall be non-binding and free of charge for us. When submitting an offer, the supplier must adhere to the exact terms of the request in terms of quantity and quality and, in the case of any derogations, must expressly point these out.
- Upon request, the supplier shall confirm the order in writing. The order confirmation must reflect all details of the order placed. Any derogations from our orders shall be deemed to have been confirmed only if we, in turn, confirm them in writing. If the supplier fails to return the order confirmation to us without undue delay, we shall no longer be bound by the order.

## III. Prices

- The agreed prices shall be fixed prices. They shall apply for delivery DAP (Incoterms 2010) to an address provided by us, and shall include packaging.
- Should it be necessary to place orders without a prior agreement on prices, in the event of an ongoing business relationship the prices of the previous order shall be deemed to have been agreed. Otherwise the supplier's list price applicable at the time the order was placed shall apply unless the list price at the time the order is fulfilled by the supplier is more favourable to us.
- If, in exceptional cases, a price "ex works" or "ex warehouse" of the supplier is agreed, we shall only bear the lowest freight cost applicable in each individual case. All costs incurred until the goods are handed over to the carrier shall be borne by the supplier. If, in exceptional cases, purchases "ex freight terminal" of the supplier are agreed, all costs incurred until the goods are delivered to the departure station shall be borne by the supplier.
- Any journeys made in connection with the provision of services shall be agreed with us in writing in advance. Travel costs, accommodation costs and expenses may, where agreed in writing, be invoiced on production of evidence; alternatively, flat-rate agreements may be entered into. Reasonable expenses shall be invoiced on the following basis:
  - Flight: Economy
  - Train: 2nd class
  - Rental car: compact class / mid-range

## IV. Delivery times

- The agreed delivery times shall be binding on the supplier. The supplier is obliged to notify us in writing without undue delay of any expected delay.
- Events of force majeure, interruptions of operations of whatever nature and for whatever reason, as well as other unexpected events that unduly complicate our acceptance of performance shall entitle us to extend the periods of acceptance without giving the supplier the right to claim damages or the right to invoice any goods singled out prior to us accepting performance.
- In the event that the agreed delivery date is exceeded, the supplier shall be in default even in the absence of a reminder. In case of a default in delivery, we are entitled to demand a lump-sum settlement for any loss or damage caused by delay in the amount of 1 % of the order value per completed week up to 5 % of the order value. We reserve the right to exercise further statutory rights.
- Without prejudice to our statutory rights or the rights agreed above, the supplier is obliged to notify us immediately if it becomes apparent that the delivery deadlines cannot be met.

## V. Delivery, delivery note and invoice

- Unless otherwise agreed, deliveries shall be made DAP (Incoterms 2010) to an address provided by us.
- The delivery note and invoice shall have the same structure in terms of format and content. They must contain the following information: ordering company, full order number and item number if there are several order items. Each order shall be dealt with separately in all correspondence with reference to the above details.
- If we do not receive the delivery note together with the goods or if the delivery note fails to correspond to the above requirements, we are entitled to reject the goods or to store the goods at the cost and risk of the supplier until such time as we receive the

due and proper documents. This shall also apply in the event of incorrect deliveries and errors in quantity.

- Invoices shall be sent separately from the goods and must not be issued prior to the goods being shipped. They shall contain details of the shipping method. Invoices shall not be used as a dispatch note.

- In the event of deliveries of goods or services that last for a period in excess of one month, these shall be invoiced on a monthly basis. In this case, the invoice shall be issued no later than by the third working day of the month following that which is to be invoiced.

## VI. Passage of risk

Risk shall pass to us when the goods are provided to us at the specified destination on the incoming means of transport ready for unloading.

## VII. Production inspections / technical approval, notifications of defect

- We are entitled but not obliged, during production and prior to delivery, to inspect – at the supplier's premises – the quality of the material used, the accuracy of measurements and quantities and other quality of the parts produced as well as compliance with all other provisions pertaining to the order. If our technical approval of the finished delivery item at the premises of the supplier or his upstream suppliers has been agreed, we shall be notified of the readiness for approval checks in writing 14 days prior the goods being ready for dispatch. If technical approval by an appointed third party has been agreed, the supplier shall arrange for approval on his own initiative and provide the approval certificate to us without undue delay and no later than together with the shipping documents. In any event, if the approval process is to be carried out by third parties, the costs of approval shall be borne by the supplier.
- Production inspections and technical approvals shall not relieve the supplier from his performance and warranty obligations.
- In the event of larger quantities, the inspection of the goods by us will be limited to random samples; any defects that are not discovered during this inspection shall be deemed to be hidden defects.
- We shall assert any claims for defects in a timely manner within 5 working days after receipt of the goods and, in the case of hidden defects, within 5 working days after the defect has been discovered.

## VIII. Liability for defects

- The supplier shall be liable for his deliveries and services being free from any defects at the time risk passes and, in particular, that they have the contractually agreed characteristics and are fully suitable for the agreed or intended purpose, including as a functional part of a device or a system and that they do not affect the correct functioning of a device or system. Insofar as the order does not contain any further requirements, the deliveries and services, including those of the supplier's subcontractors, shall be delivered in compliance with accepted engineering standards and, where DIN, VDE, VDI, DVGW or similar standards apply, in compliance with these standards. The delivery items and services shall be produced and equipped in a way that, on the day of delivery, they comply with all applicable statutory and official requirements in the Federal Republic of Germany.
- The limitation period for claims arising from defects is 36 months from the passage of risk unless the mandatory provisions of sections 478, 479 German Civil Code (*Bürgerliches Gesetzbuch*, BGB) apply. In relation to items that, in accordance with their usual use, have been used for the construction of a building and have caused its defectiveness, the limitation period for claims arising from defects is 5 years from the passage of risk. In the case of bad faith, the statutory limitation period shall remain unaffected.
- We are entitled to statutory claims for defects in full. In any event, we are entitled at our choice to require the supplier to either remedy the defect or deliver a new item. The right to claim damages, in particular to claim damages instead of performance, shall remain expressly reserved.
- We are entitled, at the expense of the supplier, to remedy the defect ourselves if the supplier is in default of providing subsequent performance. The same shall apply in cases in which, due to extreme urgency, it is not possible to notify the supplier of the defect and the pending loss or damage and to set a grace period for the defect to be remedied.

## IX. Liability for defective products

- Insofar as the supplier is responsible for a product defect, he shall, upon first request, indemnify us against claims by third parties to the extent that the cause lies within his sphere of control and organisation and he is personally liable in relation to third parties.
- In the context of his own liability for cases of loss or damage within the meaning of paragraph 1, the supplier shall also be obliged to compensate us for any expenses pursuant to sections 683, 670 BGB or pursuant to sections 830, 840, 426 BGB, which are incurred due to or in connection with a lawful product recall carried out by us. To the extent that this is possible and reasonable, we shall notify the supplier of the content and scope of such product recall in a timely manner in advance and give him an opportunity to comment.
- The supplier is obliged to take out and maintain reasonable product liability insurance. At our request the supplier shall prove that possible third party claims arising from defective products due to defective delivery items are covered by this product liability insurance.
- For the duration of the provision of the goods or services, the supplier shall also take out business and product liability insurance with the following sums insured:  
EUR 10,000,000 (two maximum claims per annum) lump sum for personal injury claims and damage to property and any pecuniary loss per insured event.

## X. Protective rights

- The supplier warrants that no third party rights are being violated in connection with his delivery.

2. The limitation period is 66 months from the passing of risk.

#### XI. Work results and rights of use

1. At our request, the supplier shall transfer all rights to the work results to us. Provided they do not constitute copyrightable work (see clause XI.2 in that regard), "**Work Results**" shall be all data, ideas, outcomes, results, inventions, discoveries or know-how of the supplier, his employees, his subcontractors or other third parties used by the supplier (hereinafter the "**Auxiliaries**"), which are created, made or produced in the context of the provision of the contractually agreed goods or services and which are necessary for the purpose of delivery. The supplier shall notify us without undue delay of all Work Results and provide all Work Results to us together with any additional information, as requested. In particular, the supplier shall transfer to us all industrial property rights in the Work Results, make all the necessary declarations in this regard and assist us in the application, registration, maintenance and defence of industrial property rights to the best of his abilities.
2. With regard to all copyrights and all rights in relation to copyrightable works of the supplier and his Auxiliaries that are created in the context of the provision of the contractually agreed goods or services and which are necessary for the purpose of delivery (hereinafter the "**Works**"), the supplier shall grant us an exclusive, transferable comprehensive right of use and exploitation for all types of use including any types of use that are still unknown at the time the contract is entered into (section 31a German Copyright Act [*Urheberrechtsgesetz, UrhG*]); such rights of use and exploitation shall be unlimited as to time, content and geographical scope. The supplier shall grant us a free right to make adjustments to the extent that a Work requires adjustments in order for us to use it in line with our interests. Technical processing and/or changes to format shall be permissible without any limitations. In addition, the supplier shall grant us the right to digitalise the Work Results as we please and, in particular, to reproduce them, to distribute them or to make them publicly accessible. In the case of Works, the supplier shall waive the right to be named and shall ensure that his Auxiliaries do the same. The supplier shall enter into agreements with his Auxiliaries in order to ensure that the supplier is able to meet his obligations regarding the transfer and/or grant of rights.
3. Financial compensation for the transfer and/or grant of rights in accordance with the above-mentioned provisions shall be deemed to be included in the agreed fee for the order in question.
4. The supplier shall keep the Work Results and the Works as well as all details made known to the supplier in this regard confidential in accordance with clause XIII.3.
5. This clause XI. shall apply, *mutatis mutandis*, for those parts of Work Results or Works which the supplier or his Auxiliaries have jointly created with us and our employees, and in particular in the case that the supplier or his Auxiliaries are joint inventors.

#### XII. Obligations with regard to the German Minimum Wage Act (*Mindestlohngesetz, MiLoG*) and the German Residence Act (*Aufenthaltsgesetz, AufenthG*), compliance, sustainability, supplier declarations

1. The supplier undertakes in the fulfilment of our orders to comply with all his obligations under the MiLoG, and in particular to pay to all his employees employed in Germany – in compliance with statutory provisions – a wage equivalent to no less than the minimum wage in force and to only employ such subcontractors who will also comply with their obligations arising from the MiLoG. In the fulfilment of our orders, the supplier shall only employ foreign nationals who hold the approvals and permits required by law.
2. In order to avoid any administrative offences and any statutory liability vis-à-vis the employees of the supplier, the supplier shall – at regular intervals and upon first written request – provide us with all documents required to check compliance with the obligations laid down in clause XII.1.
3. The supplier undertakes, upon first written request, to indemnify us against all claims and demands of third parties, and in particular against claims of the supplier's own employees and the employees of other subcontractors and temporary-workers agencies instructed, provided that the claims and demands asserted are based on the alleged breach of obligations imposed by the MiLoG or the AufenthG on the part of the supplier or a subcontractor engaged by the supplier.
4. In the fulfilment of our orders, the supplier undertakes to also comply with all other applicable laws, regulations and provisions, including (but not limited to) all anti-corruption laws and provisions as well as the Compliance Guidelines of the Viessmann Group. The latter can be downloaded under [www.viessmann.de](http://www.viessmann.de) or will be provided by us upon requests.
5. The environmental performance and, where applicable, the energy and resource efficiency of the products and services offered have a significant impact on our decision to place an order. In this context, in order to improve our environmental performance, the supplier shall deploy resources and energies efficiently and in an environmentally-friendly manner as well as taking into account the media provided to him.
6. We supply our products into export markets within and outside of the EU. Particularly with regard to deliveries in countries with which a preferential agreement has been reached, it is mandatory for suppliers' declarations to be issued. Suppliers who supply merchandise or production materials to us shall undertake, at the request of the competent purchasing department, to issue supplier declarations which meet the statutory requirements for preferential or, where necessary, non-preferential origin.

#### XIII. Terms of payment

1. Payments shall only become due once the goods and the complete invoice have been received and upon the agreed delivery date.
2. Unless otherwise agreed, payments shall be made within 2 weeks from receipt of the invoice with a 3 % cash discount or within 45 days net cash. For organisational reasons, any amounts falling due in each calendar week will only be paid once a week. All such weekly payments shall be deemed to have been made in time including for purposes of taking into account and calculating the agreed discounts.
3. Each payment shall be made without prejudice to our rights due to possible defects. We are entitled to retain any payment in whole or in part until defects have been remedied or other counter-claims arising from the whole business relationship, including those with other companies in the Viessmann Group, have been met. A made payment shall not be deemed to constitute the acceptance of contract performance, nor a waiver of claims for defects; the same shall apply in relation to any receipt of delivery issued when the goods are received.

#### XIV. Drawings, models and confidentiality

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1. We shall retain or receive ownership in any drawings, specifications, documents, models, moulds and specialist tools that we have supplied for the performance of an order or which have been specifically produced for us.
2. Upon written request, we shall be provided with a list confirming all drawings, models, documents, moulds and specialist tools belonging to us as at 31 December of each year. Upon completion of each order, these documents shall be handed over to us.
3. The supplier shall keep all information, such as drawings, documents, findings, samples, means of production, models, data storage devices etc. confidential, shall refrain from making these available to third parties (including subcontractors) without our written consent and shall not use them for any purposes other than those specified by us. The same shall apply in relation to any reproductions. This obligation shall not apply to information of which the supplier was already legitimately aware without any confidentiality obligation upon receipt of the information, or of which the supplier has become aware later in a legitimate way without any confidentiality obligation, which – without breach of contract by either of the Parties – is or becomes publicly known, or to information in relation to which he has been given written permission for a different use. Without our prior written consent, the supplier must not use his business relationship with us for advertising purposes.
4. We are entitled to use the supplier's image and text materials pertaining to the goods to be supplied (e.g. from the supplier's website) in connection with the distribution of these goods (where required after their installation and processing) anywhere in the world, free of charge, in an unchanged or changed form.

#### XV. Provision of materials, retention of title

1. The materials provided for us for purposes of processing an order shall remain in our ownership. The same shall apply in the event that materials are worked on or processed on our behalf regardless of the work or processing step. In the event that materials are processed with other items that are not owned by us, we are entitled to joint ownership in the newly-produced item at a ratio equivalent to that of the value of the respective material provided in relation to the total of all items used in the production including the supplier's expenses incurred during processing. The supplier shall store, free of charge, the item which is passing into our joint ownership. The same shall apply in the case of the combination or amalgamation of items.
2. We retain ownership of tools. The supplier shall use the tools exclusively for the production of the goods ordered by us. The supplier is obliged to carry out any required maintenance and inspection work as well as all servicing and repair work on all of our tools at his own costs and in a timely manner.
3. The supplier shall not have any right to any retention of title whatsoever to items delivered by the supplier. Upon delivery of possession, all delivery items shall pass into our ownership. No liens whatsoever shall arise.
4. The supplier shall be liable for the loss of or damage to the items owned by us. The supplier is obliged to take out reasonable insurance regarding the items owned by us in accordance with the preceding provision, to store them in the due and proper way and to hand them over to us upon termination of the contract. At our request, the supplier shall prepare and submit to us lists of items owned by us.
5. We shall be notified without undue delay of any damage to items owned by us. The same shall apply in the case of any type of enforcement procedures.

#### XVI. Foreign Trade Law

1. Viessmann, in accordance with legal requirements of Export Control needs the following data for the correct Classification of Goods.
2. Please specify, whether your article (product name, material number) is covered by the EG Dual-use Regulation 428/2009. If yes, please provide the number on the control list.
3. In addition please specify whether your article (product name, material number) has any US-content and whether it is covered by the US Commerce Control List of Bureau of Industry and Security (BIS). If yes, please provide the Export Control Classification Number (ECCN).

#### XVII. Set-off and place of jurisdiction

1. Setting off any counterclaims against our claims or exercising a retention right is only permissible if we have accepted the counterclaim in question in writing or if it has been upheld and declared unappealable by a court of law.
2. We are entitled to set off any claims whatsoever against any claims on the part of the supplier vis-à-vis a company in the Viessmann Group.
3. The governing law shall be the law of the Federal Republic of Germany, but excluding an application of the United Nations Convention on the International Sale of Goods (CISG).
4. The place of performance for all payments and deliveries shall be our place of business.
5. Our place of business shall be the agreed place of jurisdiction for all legal disputes, including proceedings restricted to documentary evidence and summary enforcements of bills of exchange arising from the business relationship, including disputes regarding the validity of a contract and of these Terms and Conditions. However, at our discretion, we are also entitled to bring claims against the supplier at a place with jurisdiction for the supplier in accordance with general regulations.