

**General Terms and Conditions of Sales, Supply and Payment**

(following „General Terms of Sales“)  
of Johann Vitz GmbH & Co. KG

**for Export Business in the European Union and Worldwide****Issue: 2015-07****English translated edition – Non-binding version**

These General Terms of Sales have been prepared in German,  
and may have been translated into other languages.  
In case of a dispute, the German version shall have precedence.

**01. Scope of validity, Definitions**

- 01 These terms of sales apply to every (supply-) framework contract and call-order contract (following "agreement"), and all individuals contracts and / or orders under an agreement (following "individual contract") to business owners, legal entities under public law and special funds under public law (following "partners").
- 02 Our deliveries and services are provided exclusively on the basis of the terms and conditions below.
- 03 The business terms and conditions of the partner, unless expressly recognized by us, have no validity.
- 04 If any part of these Additional Conditions for framework contracts be or become invalid, the validity of the remaining provisions shall not be affected.

**02. General provisions**

- 01 Full details of any verbal agreements will be immediately confirmed in writing by the contracting partners.
- 02 Information and illustrations contained in brochures and catalogues are, in accordance with usual trade practice, regarded as approximations unless they have been expressly described by us as binding.

**03. Contract acceptance and rejection, termination without notice**

- 01 Orders will not be binding until they are confirmed by us.
- 02 We are entitled to refuse to accept an order if it is evident that payment would be endangered by the individual contract owing to the partner upon acceptance of the order.
- 03 This is especially the case if the creditworthiness of the partner by the "Euler Hermes Forderungsmanagement Deutschland GmbH" is rated "High Risk" (level 7) or worse or any other reason within the meaning of § 321 paragraph 1 of the Civil Code (Name of the Law: BGB, Germany) is present. The same applies, notwithstanding the provision in point 10.06, for the fulfillment of an order, in addition to the § 321 paragraph 1 sentence 2 and paragraph 2 of the Civil Code (Name of the Law: BGB, Germany) will apply.
- 04 We are also entitled to immediate termination of the contract, if is an important reason for this. An important reason is especially true if, after the conclusion of the contract, that our justified under the contract entitlements are being endangered by lack of partner, and the partner not insured despite a request within a reasonable time his performance believable. Legal termination and withdrawal rights and the rights under point 10.06 and 12.03 shall remain unaffected.

**04. Framework contracts, long-term contracts, call-order contracts**

- 01 **In the framework contracts, long-term contracts and call-order contracts and individual contracts under these agreements apply additionally our "Additional conditions for framework contracts, long-term contracts and call-order contracts" in the current version at the time of order acceptance.**

- 02 The long-term contracts are open-ended contracts and agreements with more than 12 months duration.

**05. Manufacturing Equipment (tools, molds, templates, etc.) and Pattern**

- 01 Manufacturing costs for manufacturing equipment and pattern (tools, molds, templates, etc.) will, unless otherwise agreed, be invoiced separately from the goods to be supplied.
- 02 This also applies to manufacturing equipment have to be replaced due to wear and tear.
- 03 **In manufacturing equipment and patterns apply additionally our "Additional conditions for manufacturing equipment (tooling) and patterns" in the current version at the time of order acceptance.**

**06. Confidentiality, secrecy, drawing, technical documents**

- 01 Each of the contracting partners will use all documents (which will also include samples, models and data) and information received by them under the business relationship only for the contractual purpose, and maintain secrecy in respect of third parties with the same due care as applied to their own documents and information, where the other partner describes them as confidential or has an obvious interest in maintaining secrecy in respect of such documents or information.
- 02 This obligation commences on receipt of the first documents or information and ends 36 months after the end of the business relationship.
- 03 The obligation does not apply to documents and information which are generally known, or which were already known to the contracting partner on receipt and where the contracting partner was not under obligation of secrecy, or where they are subsequently conveyed by a third party who is authorised to pass on such documents or information, or where the documents or information are developed by the receiving contract partner without exploitation of documents or information of the other contracting partner.
- 04 Where one of the contract partners makes available to the other drawings or technical documents relating to the goods to be supplied, or to the manufacture of such goods, to the other partner, these remain the property of the contract partner submitting them.

**07. Prices**

- 01 Our prices are in Euro, exclusive of turnover tax (VAT), packing, freight, carriage and insurance, taxes and customs duties (toll) and coast of customs clearance.

**08. Delivery**

- 01 Unless otherwise agreed, we will deliver "ex-works".
- 02 Decisive for observing the delivery date or delivery times is the message of the dispatch or collection by us.
- 03 The delivery period begins with the dispatch of our order confirmation and shall be reasonably extended if the requirements of point 13.01 and 13.02 present.
- 04 Partial deliveries are permitted within reason. They will be invoiced separately.
- 05 Production-related long or short deliveries are permitted within a tolerance of 10 per cent of the total order quantity. The total price will be adjusted accordingly.

**09. Dispatch and transfer of risk**

- 01 Goods which are notified as being ready for dispatch are to be taken over immediately by the partner.
- 02 We are otherwise entitled, at our option, to dispatch them or to store them at the cost and risk of the partner.
- 03 In the absence of any special agreement, we will select the transport method and routing.
- 04 With the handover to the railway, the forwarding agent or freight carrier, or on commencement of storage, but no later than departure from the factory or warehouse, the risk shall pass to the partner, even if we include the delivery and transport insurance as an optional service have taken over.

05 **If using INCOTERMS of the International Chamber of Commerce, the transfer of risk described in point 09.04 remains.**

**10. Payment terms and delay of payment**

01 All invoices are due for payment within 30 days of the invoice date.

02 -----

03 Where we have indisputably supplied goods which are partly defective, our partner is nevertheless obliged to pay for the non-defective part, unless partial delivery is of no use to him.

04 In addition, the partner may only offset against claims for compensation for remedial or completion costs; with other counterclaims if they are only declaratory judgment ready for decision or uncontested. A retention or right to refuse performance of the partner exists only within these limits.

05 If the payment terms are not met, we shall be entitled to bill interest on arrears at the rate charged to us by the bank for current account overdrafts, but at a minimum of 8 percentage points above the base interest rate of the European Central Bank at the time.

06 In the event of any delay in payment we may, after giving notice in writing to the partner, suspend our obligations until payments have been received.

07 Bills of exchange and cheques will only be accepted where this has been agreed, and only on account of performance and on condition that they may be discounted. Discount charges will be calculated from the due date for payment of the invoice amount. A guarantee for presentation of bills of exchange and cheques at the due and proper time and for the lodging of a protest is excluded.

**11. Reservation of title**

01 We reserve the right of ownership in respect of the goods supplied until such time as all claims under the business relationship with the partner have been met.

02 The partner is entitled to sell these goods in the regular course of business, provided it meets its obligations arising from the business relationship with us in good time. However, it may neither pledge the reserved goods nor transfer ownership of them as security. It is obliged to protect our rights if goods which are subject to reservation of title are resold on credit.

03 In the event of breaches of its duties by the partner, in particular in the case of delayed payment, we shall be entitled, after a reasonable period of grace allowed to the partner for performance has elapsed without result, to withdraw from the individual contract and take back the goods; this shall not affect the statutory provisions concerning cases where it is not necessary to allow a period of grace. The partner shall be obliged to surrender the goods.

04 With immediate effect the partner assigns to us as security all claims and rights deriving from the sale or any hiring, for which we may have given the partner permission, of goods over which we have rights of ownership. We hereby accept the assignment.

05 Any working or processing of the goods which are subject to reservation of title shall at all times be carried out by the partner on our behalf. If the goods which are subject to reservation of title are processed or inseparably mixed with other items not owned by us, we shall acquire joint ownership of the new product in the proportion of the invoice value of the goods which are subject to reservation of title to the other processed or mixed items at the time of processing or mixing.

06 If our products are combined or inseparably mixed with other moveable items to form a single product and the other product is deemed to be the principal product, the partner shall transfer joint ownership to us on a pro rata basis, as far as the principal product is owned by it. The partner shall maintain ownership or joint ownership on our behalf. In all other respects the same shall apply to the product created by processing or combination or mixing as to the goods which are subject to reservation of title.

- 07 The partner must inform us immediately of enforcement measures being taken by third parties in respect of the reserved goods by handing over to us the documents required for any intervention. This also applies to infringements of any other kind.
- 08 If the value of the existing securities exceeds the secured claims in total by more than 20 per cent, we undertake, at the partner's request, to release securities of our choice in this respect.

**12. Delay in delivery**

- 01 If we are able to anticipate that it will not be possible for the goods to be delivered within the delivery period, we will immediately inform the partner in writing of the reasons for this, and also if possible indicate the probable delivery date.
- 02 In the event of delivery being delayed by one of the circumstances as set forth in point 13.01 and 13.02 below, or as a result of any action or omission on the part of the partner, an extension of the delivery period will be granted appropriate to the circumstances.
- 03 The partner is only entitled to withdraw from the individual contract if we are responsible for the delivery date not being met and the partner has allowed us a reasonable period of grace without result.

**13. Force majeure**

- 01 Force majeure, labour disputes, disturbances, official measures, non-arrival of deliveries from our suppliers and other unpredictable, unavoidable and serious events will release the contracting partners from their duty to perform for the duration of the disturbance and to the extent of their effect.
- 02 This also applies if these events occur at a time in which the party concerned is in a delay in delivery; unless he has the delay is caused intentionally or by gross negligence.
- 03 The contracting partners are obliged, so far as is reasonable, to provide the necessary information immediately and in good faith to adjust their obligations to the changed conditions.

**14. Condition of the goods**

- 01 The condition of the goods is determined exclusively by the agreed technical supply specifications. If we have to deliver according to drawings, specifications, samples etc. of our partner, that partner takes over the risk of fitness for the intended use
- 02 Decisive for the contractual condition of the goods is the date of transfer of risk in accordance with point 09.04.
- 03 With our deliveries, we consider the applicable legal rules of the European Union and the Federal Republic of Germany, e.g. REACH (Regulation EC no. 1907/2006), the Electrical and Electronic Equipment (WEEE) and EEE-Substances (ElektroStoffV) as a national transposition of the Directives 2002/95 / EC (RoHS I) and 2011/65 / EU (RoHS II) and Directive 2002/96 / EC (WEEE) and the ELV Directive (ELV) as the national implementation of the EU Directive 2000/523 / EC.
- 04 We will inform the partners on relevant, especially caused by the REACH regulation changes in the product, its supply availability, use or quality and shall take appropriate measures to partners in individual cases.

**15. Material defects**

- 01 Any material defects in respect of any defect deriving from unsuitable or improper use, defective assembly or operation by the partner or third parties, normal wear and tear, defective or negligent handling, will also be excluded as the consequences of unsuitable modifications or repairs undertaken by the partner or third parties without our approval. The same shall apply to defects which only reduce the value of the goods or their fitness for their intended use to an insignificant extent.

- 02 The limitation period for claims for material defects, unless otherwise agreed, **according to the legal regulations in the Federal Republic of Germany. Claims for defects barred according to these regulations in 24 months.**
- 03 Where it is agreed that the goods are to be accepted after completion or that initial samples are to be tested, notification of defects which could have been discovered by the partner under careful acceptance or testing of initial samples is excluded.
- 04 We must be given the opportunity of assessing the notified defect. The goods complained of must be returned to us immediately; we will take over the transport costs where the notice of defect is justified. In the event of the partner failing to observe these obligations, or carrying out modifications of the goods which are complained of without our consent, he will lose any claims for material defects.
- 05 In the event of notice of defect which is justified and made at the due and proper time, we will, at our choice, make rectification to the goods complained of or supply a replacement free of defect.
- 06 In the event of our failing to meet these obligations, or failing to do so within a reasonable time in accordance with the terms of the contract, the partner may set in writing a final deadline within which we must fulfil our obligations.
- 07 In the event of this period expiring without result, the partner may demand reduction of the price, withdraw from the individual contract or himself carry out, or have the necessary subsequent improvement carried out by a third party at our cost and risk.
- 08 There shall be no reimbursement of costs if the expenses increase because the goods have been brought to another place after delivery by us, unless this means that the goods are being used as they were intended to be.
- 09 The partner has statutory rights of recourse against us only in so far as the partner has not reached any agreements with its customer which go beyond the statutory claims for defects. In addition, point 15.01, 15.04 and 15.08, applies accordingly to the scope of the rights of recourse.

#### **16. Other claims, liability**

- 01 Unless otherwise specified below, any additional or more extensive claims by the partner against us are excluded. This shall apply in particular to claims for damages for a breach of duties arising from the obligation or from unlawful acts.
- 02 We are not liable for any damage not deriving from the delivered goods themselves. We are in particular not liable for any loss of profit or other financial losses by the partner.
- 03 The limitations of liability indicated above do not apply in the case of specific intent, gross negligence on the part of our legal representatives or senior employees, and in the event of culpable violation of significant contractual obligations; so with such obligations whose fulfillment enables the proper performance of the contract and on the fulfillment of the contractual partner can trust and can rely on.
- 04 In the event of culpable violation of significant contractual obligations we are liable - other than in cases of specific intent or gross negligence on the part of our legal representatives or senior employees - only for standard contractual loss, or loss which might reasonably have been expected.
- 05 The limitation of liability is also not applicable in those cases where there is liability in accordance with product liability laws in the case of defects in goods supplied for private use.

- 06 The limitation of liability is also not applicable in case of injury of life, body or health and in the absence of guaranteed characteristics, if, and insofar as the object of the guarantee was to cover the partner against any losses not deriving from the goods supplied themselves.
- 07 Insofar as our liability is excluded or limited, this is also applicable to the personal liability of our employees, workers, personnel, legal representatives and vicarious agents.
- 08 The legal regulations on burden of proof remain unaffected.

**17. Place of performance, place of jurisdiction and applicable law**

- 01 Unless otherwise indicated in the order confirmation, the place of performance is our principal place of business.
- 02 The place of jurisdiction for all legal disputes, including any action relating to payment bills of exchange or cheques, is our principal place of business. We are also entitled to bring an action at the place of business of the partner.
- 03 The contractual relationship is exclusively subject to the laws of the Federal Republic of Germany.
- 04 Application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG - "Vienna Sales Convention") is excluded.
- 05 These General Terms of Sales have been prepared in German and may have been translated into other languages. In case of a dispute, the German version shall have precedence.
- 06 In the event of a dispute between the Parties concerning the explanation of a legal term, the German explanation of this term will prevail.

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**Additional Conditions**  
**for framework contracts, long-term contracts, call-order contracts**  
(following „Additional conditions for framework contracts“)  
of Johann Vitz GmbH & Co. KG

**for business in Germany,**  
**the European Union and Worldwide**

**Issue: 2015-07**

**English translation – Non-binding version**

These Additional Conditions for framework contracts have been prepared in German,  
and may have been translated into other languages.  
In case of a dispute, the German version shall have precedence.

**01. Scope of validity, Definitions**

- 01 These additional conditions apply in addition to our General Terms of Sales, Supply and Payment in the current version at the time of order acceptance. All conditions of our General Terms of Sales, Supply and Payment shall apply to such supplementary agreements.
- 02 Our deliveries and services are provided exclusively on the basis of the terms and conditions below.
- 03 The business terms and conditions of the partner, unless expressly recognized by us, have no validity.
- 04 If any part of these Additional Conditions for framework contracts be or become invalid, the validity of the remaining provisions shall not be affected.
- 05 The long-term contracts are open-ended contracts and agreements with more than 12 months duration.

**02. General provisions**

- 01 Full details of any verbal agreements will be immediately confirmed in writing by the contracting partners.

**03. Acceptance, rejection and adaptation of the Individual Contract**

- 01 Individual orders, release and delivery schedules (following “individual contract”) under a (supply-) framework contract, call-order contract (following "agreement") are not binding until confirmed by us.
- 02 We may refuse to accept an individual contract, when it becomes evident that the calculated with us, or agreed minimum delivery quantity of the individual contract is not reached.
- 03 We may refuse to accept an individual contract, if it becomes clear that the required periodic delivery amount calculated with us, or as agreed in the framework contract maximum application rate for the respective periods exceeds.
- 04 We may refuse to make a correction in our order confirmation to those covered by point 03.02 and point 03.03 individual contracts to pre-contractual and capacity-compliant quantity adjustment in accordance with the terms of the framework contract.

**04. Price adjustment (temporarily, voluminous)**

- 01 If any significant change occurs in the case of long-term contracts (contracts with a term of more than 12 months and open-ended-contracts), in respect of wage, material or energy costs, each of the contracting partners is entitled to demand an appropriate adjustment of the price, taking these factors into consideration
- 02 Where a binding order quantity is not agreed, our calculation will be based on the non-binding order quantity expected by the partner for a specific period of time (target quantity).

- 03 Where the partner purchases less than the target quantity, we are entitled to increase the unit price by an appropriate amount.
- 04 Where the partner purchases more than the target quantity, we will reduce the unit price accordingly, provided that the partner has given notice of the surplus requirement not less than 3 months before delivery.

**05. Purchase obligations and contract duration in call-orders contracts**

- 01 Call-orders contracts have unless otherwise agreed, a maximum term of 12 months.
- 02 In call-orders contracts, unless otherwise agreed, binding quantities are telling us at least 3 months before the delivery by calling.
- 03 In the case of call-orders contracts, unless otherwise agreed, binding quantities are to be notified to us by call not less than 3 months before the delivery date. The contract expiration date must not be exceeded in the appointment schedule lines.
- 04 If us a call for a binding Releases quantity delivery plan not be sent within 30 days, we are entitled to the total amount or balance of the contract demand end of the contract or deliver within 3 months of the prompts.
- 05 Any additional costs caused by our partner through late calling or subsequent amendments to the call in respect of time or quantity are to be borne by the partner; in this respect our calculation will prevail.

**06. Termination of the contract**

- 01 Unlimited open-ended contracts and agreements with more than 12 months duration may be terminated with a period of 6 months. For the first time a termination after 17 months is possible.
- 02 Terminations must be in writing. The date of the termination of the contract is to be named. Terminations are delivered due form and time; the consequences without confirmation from the opposite side on termination date will be effective.
- 03 The right to extraordinary termination for other reasons will remain.

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**Additional Conditions**  
**for Manufacturing Equipment (tooling) and Pattern**  
(following „Additional Conditions for tooling“)  
of Johann Vitz GmbH & Co. KG

**for business in Germany,  
European Union and Worldwide**

**Issue: 2015-07**

**English translation – Non-binding version**

These Additional Conditions for tooling have been prepared in German,  
and may have been translated into other languages.

In case of a dispute, the German version shall have precedence.

**01. Scope of validity, Definitions**

- 01 These additional conditions apply in addition to our General Terms of Sales, Supply and Payment in the current version at the time of order acceptance. All conditions of our General Terms of Sales, Supply and Payment shall apply to such supplementary agreements.
- 02 Our deliveries and services are provided exclusively on the basis of the terms and conditions below.
- 03 The business terms and conditions of the partner, unless expressly recognized by us, have no validity.
- 04 If any part of these Additional Conditions for tooling be or become invalid, the validity of the remaining provisions shall not be affected.

**02. General provisions**

- 01 Full details of any verbal agreements will be immediately confirmed in writing by the contracting partners.

**03. Invoicing of the manufacturing costs**

- 01 Manufacturing costs for manufacturing equipment and pattern (tools, molds, templates, etc.) will, unless otherwise agreed, be invoiced separately from the goods to be supplied.
- 02 If the partner suspends or terminated cooperation during the period of manufacture of the manufacturing equipment or pattern, all manufacturing costs incurred at his expense.
- 03 The production costs for manufacturing equipment and patterns and final installment of the production costs will be charged after product release (term “product release” analogous VDA regulations).
- 04 If the product release is not given within 30 days after samples of the product, we are entitled to charge the cost of production.
- 05 An outstanding process release is an independent action, without affecting to the billing of production costs, and the due date of the invoice. Retention or right to refuse performance of the partner does not exist.

**04. Maintenance, wear and tear**

- 01 **The costs for maintenance and proper storage, together with the risk of damage to, or destruction of the manufacturing equipment will be borne by us.**
- 02 **The cost of a replacement of manufacturing equipment as result of wear and tear shall be borne by the partner.**
- 03 About a new preparation for wear and tear, the partners will be informed through an offer.

**05. Use after completion of the manufacturing equipment**

- 01 The manufacturing equipment remains, even if the partner has paid for them, at least until completion or Termination of supply agreement in our possession.

- 02 The partner is afterwards entitled to require the manufacturing equipment out if a mutual agreement to the time of its release was obtained, and the partner has fulfilled his contractual obligations in full.
- 03 **With publication the technical knowledge of the manufacturer embodied in this manufacturing equipment, is additionally to be compensated accurately to the full cost of the manufacturing equipment, but at least 50 % of the full cost of the manufacturing equipment.**
- 04 We will keep the manufacturing equipment free of charge for three years after the final delivery to our partner. We will then request our partner in writing to make known his views on their further use within 6 weeks.
- 05 Our duty of storage will end if, within these 6 weeks, no such statement has been made, or if no new order has been given.

**06. Partner protection agreement**

- 01 Purchaser-related manufacturing equipment which has been correctly paid, may be used by us only with the prior written agreement of our partner for supply to third parties.

**07. Payment**

- 01 Invoices for manufacturing equipment and pattern are due within 30 days net from date of invoice.

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