

General Terms and Conditions for the Supply of Vecoplan Original Parts



I. General

1. The supply of goods and services is subject to these terms and conditions and any separate contractual agreements. Any diverging purchase conditions of the Customer shall not become part of the contract even in the event of order acceptance.
Unless agreed otherwise, the contract shall be concluded by written confirmation of Vecoplan.
2. Vecoplan reserves any property and intellectual property rights in all samples, estimate of costs, drawings and other material or immaterial information including electronic data; such information shall not be disclosed to third parties. Vecoplan undertakes not to disclose any information or documentation classified by the Customer as confidential to third parties without the Customer's consent.
3. Any references to the application of statutory provisions are for the purposes of clarification only. Therefore, the statutory regulations shall also apply without such a clarification insofar as they are not directly changed or are explicitly excluded in these terms and conditions.

II. Price and Payment

1. Unless agreed otherwise, all prices are quoted net ex works including loading at the premises of Vecoplan, but excluding packaging and unloading. Respective statutory VAT to be added.
2. Unless agreed otherwise, the Customer shall pay the contract price to the account of Vecoplan within 14 days without any deductions in instalments as follows: one third as advance payment upon receipt of order confirmation, one third upon notification of Customer of readiness to dispatch main parts, and the remaining amount within one month after the transfer of risk.
3. The Customer's right to withhold payments or offset payments against counterclaims is limited to cases where these rights of the Customer are undisputed or have become legally binding by court decision. This shall not apply to any counter-rights of the Customer with regards to defective products.

III. Delivery Periods, Delay in Delivery

1. Delivery periods are subject to the contractual agreements of the parties. Adherence to the delivery period by Vecoplan assumes that all commercial and technical issues between the parties have been resolved and the Customer has met all obligations incumbent upon him such as, for example, provision of all required public permits and certificates as well as other required documents or payment of an agreed deposit. Where this is not the case, the delivery period shall be extended accordingly. This shall not apply if the delay occurs by fault of Vecoplan.
2. Adherence to the delivery period is subject to orderly and timely delivery to Vecoplan by its sub-suppliers. Vecoplan shall notify the Customer of any anticipated delay as soon as possible.
3. Delivery periods are met if the goods leave the premises of Vecoplan on or before their expiry or notification of readiness for dispatch is given. Insofar as acceptance of the goods is required, the date of acceptance - except in case of a justified denial of acceptance - is material, alternatively the date of notification of the readiness for acceptance.
4. If dispatch and, where applicable, acceptance is delayed for reasons for which the Customer is at fault, the Customer shall bear the cost resulting from such delay after one month following the notification of the readiness for dispatch or acceptance.
5. If delivery periods are not met due to force majeure, strikes or other events beyond the control of Vecoplan, the delivery periods shall be extended accordingly. Vecoplan shall notify the Customer about the beginning and the end of such circumstances as soon as possible.
6. The Customer may withdraw from the contract without giving notice if Vecoplan is finally unable to supply the services in full before the transfer of risk. The Customer may furthermore withdraw from the contract if supply of part of the goods becomes impossible and the Customer has a justifiable interest in refusing to accept the partial delivery. If this is not the case, the Customer must pay the applicable contractual price of the partial delivery. The same applies in the event of incapacity on the part of Vecoplan. Apart from this, the provisions of

Section VII.2 shall apply.

If the incapacity or impossibility on part of Vecoplan occurs during the delay in acceptance or if the Customer is solely or largely responsible for these circumstances, the Customer shall remain liable to pay the consideration.

7. If the Customer incurs a loss as a result of delayed performance by Vecoplan, the Customer shall be entitled to claim flat-rate compensation for the delay. This shall amount to 0.5% for each full week, however up to a maximum of 5% of the value of the respective part of the overall delivery that cannot be used promptly or in accordance with the contract as a result of the delay.

If, taking account of the statutory exceptions, the Customer sets a reasonable deadline for Vecoplan to perform the service after the due date, and the deadline is not adhered to, the Customer is entitled to withdraw from the Contract to the extent permitted by law. At the request of Vecoplan, the Customer undertakes to state within a reasonable period of time whether or not it will exercise its right to withdraw from the contract.

All further claims arising from delayed delivery shall be governed exclusively by Section VII. 2 of these terms and conditions.

IV. Transfer of Risk, Acceptance

1. Risk for the goods shall pass to the Customer according to the agreed INCOTERMS, even if partial deliveries are made or if Vecoplan has assumed other performances, such as the shipping costs or delivery and installation. In the case of partial deliveries, only the risk for the partial delivery shall pass to the Customer. Insofar as acceptance of the goods is required, this shall be material for the transfer of risk. Acceptance shall be effected without delay on the agreed date, alternatively following notification by Vecoplan of the readiness for acceptance. The Customer is not entitled to refuse acceptance of the goods by reason of minor defects. In case no INCOTERMS are agreed upon, risk for the goods shall pass upon notification of the preparedness to deliver.
2. If dispatch or acceptance of the goods is delayed or omitted for reasons for which Vecoplan is not at fault, risk for the goods shall pass to the Customer upon notification of the readiness for dispatch or acceptance. Upon the Customer's request, Vecoplan shall take out insurance at the Customer's expense.
3. Partial deliveries are permissible, provided that this is reasonable for the Customer.

V. Retention of Title

1. Vecoplan shall retain title to the goods until receipt of all payments – including for any additional services – under the respective supply contract.
2. Vecoplan shall be entitled to insure the goods against theft, breakage, fire, water and other damage at the Customer's expense unless the Customer can prove that it has taken out such insurance itself.
3. The Customer shall not sell, pledge or assign the goods by way of security. The Customer shall inform Vecoplan without delay if the goods have been attached, seized or otherwise disposed of by third parties.
4. In the event of actions in breach of contract by the Customer, a default in payment in particular, Vecoplan shall be entitled to take back the goods after giving notice and the Customer shall be liable to hand them over.
5. Vecoplan may only demand surrender of the goods on account of retention of title if it has withdrawn from the contract.
6. An application for the initiation of insolvency proceedings shall entitle Vecoplan to withdraw from the contract and demand the immediate return of the goods.

VI. Claims for Defects

Vecoplan shall be liable for claims for material defects and defects of title to the exclusion of all further claims – subject to the provisions in Section VII – as follows:

Material defects

1. Vecoplan shall, at its discretion, repair or replace all parts that prove to be defective due to circumstances prior to the transfer of risk. Vecoplan must be notified in writing about the discovery of such defects without delay. Replaced parts shall become the property of Vecoplan.
2. Following communication with Vecoplan, the Customer must give Vecoplan the necessary time and opportunity to complete all the repairs and replacements that Vecoplan deems necessary; otherwise, Vecoplan shall be released from any liability for resulting consequences. Only in cases of extreme emergency, where there is a risk to operational safety or to avoid disproportionate further damages, of which Vecoplan needs to be informed immediately, does the Customer have the right to rectify the defect itself or have a third party do the repair and to demand the required reimbursement from Vecoplan.
3. With regard to the direct costs arising from the repair or replacement, Vecoplan shall – provided that the complaint proves to be justified – bear the costs of the replacement part including shipment.
4. The Customer's right to withdraw from the contract if Vecoplan fails to repair or replace the goods due to a material defect within a reasonable period, taking account of the statutory exceptions, shall remain unaffected. In the event of a minor defect, the Customer shall be entitled only to a reduction of the contractually agreed price. The right to a reduction of the contractually agreed price is otherwise excluded. All further claims shall be governed exclusively by Section VII. 2 of these terms and conditions.
5. Vecoplan shall accept no liability for the following, in particular: Unsuitable or improper use, defective installation or commissioning by the Customer or third parties, natural wear and tear, defective or negligent handling, improper maintenance, unsuitable operating materials, deficient construction work, unsuitable foundation, chemical, electrochemical or electrical influences – for which Vecoplan is not at fault.
6. If the defect is rectified improperly by the Customer or a third party, Vecoplan shall bear no liability for the resultant consequences. The same applies to any modifications to the goods that are made without the prior consent of Vecoplan.

Defects of title

7. If use of the goods leads to an infringement of industrial property rights or copyright within Germany, Vecoplan shall, at its expense, procure the right for the purchaser to generally continue to use the goods, or modify the goods in a manner reasonable for the purchaser such that the infringement no longer exists.
If this is not possible under reasonable economic conditions or within a reasonable period, the Customer shall be entitled to withdraw from the contract. Vecoplan shall also be entitled to withdraw from the contract under the conditions stated.
Furthermore, Vecoplan will indemnify the Customer against any undisputed or legally enforceable claims of the respective holders of the industrial property rights.
8. The obligations of Vecoplan as defined in Section VI. 7 are conclusive, subject to the provisions of Section VII. 2 governing an infringement of industrial property rights or copyright.
These obligations shall exist only if:
 - The Customer gives Vecoplan prompt notice of the industrial property or copyright infringement claim,
 - The Customer gives Vecoplan reasonable support in defending such claims and, where applicable, allows Vecoplan to carry out modifications in accordance with Section VI. 7,
 - Vecoplan reserves the right to resort to all defence measures at its disposal including settlement out of court,
 - The defect of title is not due to an instruction of the Customer and
 - The infringement of property rights is not due to modifications made by the Customer itself or in a manner not conforming with the contract.

VII. Liability of Vecoplan, Exclusion of Liability

- 1 If the goods cannot be used by the Customer as specified in the Contract as a result of omitted or faulty implementation of suggestions and advice given before or after conclusion of the Contract, or due to failure to fulfil other contractual ancillary obligations – especially

- instructions for operation and maintenance – then the provisions of Sections VI and VII 2. shall apply, to the exclusion of further claims.
2. For damage other than damage to the goods, Vecoplan shall – regardless of the legal basis – only be liable
 - a) In case of intent,
 - b) If there is gross negligence on the part of the owner/executive bodies or the director
 - c) In the event of culpable injury to life, limb or health
 - d) If there are defects that Vecoplan has fraudulently concealed,
 - e) As part of a promise of guarantee,
 - f) For defects in the goods insofar as it is liable, pursuant to the Product Liability Act, for personal injury or property damage to privately used objects.In the case of culpable violation of essential contractual duties, Vecoplan shall also be liable for gross negligence of non-executive employees and for slight negligence; in the last instance, the liability shall be limited to contractually typical and reasonably foreseeable damages.
All further claims are excluded.

VIII. Statute of Limitations

All claims of the Customer – regardless of the legal basis – are subject to a limitation period of twelve (12) months. The statutory limitation periods shall apply to claims for compensation in accordance with the provisions of Section VII. 2 a – d and f. These limitation periods shall also apply to any defects of building construction or goods which were used as typically intended in a building and were responsible for the building's defects.

IX. Use of Software

If software is included in the scope of supply, the Customer is granted a non-exclusive right to use the software supplied including its documentation. This is supplied for use with the goods for which it is intended. The software must not be used on more than one system.
The Customer may only duplicate, revise and translate the software and convert it from the object code into the source code to the extent permitted by law (Sections 69 a et seq. of the German Copyright Act (UrhG)). The Customer shall not remove any manufacturer's information – Copyright information in particular – or alter this without the express prior consent of Vecoplan.

Vecoplan and, where applicable, the software supplier reserve all other rights to the software and its documentation, including copies thereof. The granting of sub-licences is not permitted.

X. Applicable Law, Place of Jurisdiction

1. All legal relationships between Vecoplan and the Customer shall be governed exclusively by German law, as applicable to relationships between domestic parties. The parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods (11 April 1980) (Federal Law Gazette 1989 II page 588).
2. The place of jurisdiction shall be the court competent for the registered office of Vecoplan. However, Vecoplan shall also be entitled to appeal to the court having jurisdiction for the Customer's place of business.