

General Terms & Conditions of Sale - Valvoline (Deutschland) GmbH

Article 1 - General Terms and Conditions

1. The General Terms and Conditions of Sale set out herein ("General Terms and Conditions of Sale") shall apply 1) in respect of all quotations, estimates and order confirmations issued by Valvoline (Deutschland) GmbH ("Supplier" or "Vendor"), and also 2) in respect of all contracts as specified below between the Supplier and (potential) Purchaser ("Purchaser" or "Orderer"). The Supplier shall only accept orders for goods and/or services, where such orders are based on these General Terms and Conditions of Sale.
2. "Order confirmation" shall mean the written confirmation by the Supplier to sell/supply the goods and/or services described therein to the Purchaser. "Order" shall mean the written or verbal order by the Purchaser in respect of the purchase of goods and/or services from the Supplier.
3. A Contract ("Contract") shall only come into existence if 1) the Purchaser has issued a written Order Confirmation or 2) the Purchaser has not issued an Order Confirmation because the Vendor has supplied the Purchaser with the goods and/or services and the Purchaser has not contested this immediately in writing.
4. The Supplier may withdraw its quotations and estimates at any time without notice, provided that no contract has yet been entered into between the Supplier and the Purchaser.
5. Cancellations of orders or goods and/or services returned for a credit note, will not be accepted. Orders shall be deemed to be binding on the Purchaser and open for acceptance by the Supplier for the periods stated therein or, if no period of validity is stated, for a period of 30 days after they are issued. Any unilateral cancellation by the Purchaser during this period shall not be valid.
6. If a contract is entered into with the Supplier, it will be assumed that the Purchaser has accepted the General Terms and Conditions of Sale as an integral part of the contract. Unless stated otherwise by the Supplier in writing, the General Terms and Conditions of Sale shall take precedence over all conflicting or additional terms and conditions claimed/referred to by the Purchaser.

Article 2 - Prices

1. All the Supplier's prices quoted, estimated, published or announced by the Supplier are non-binding and subject to changes, which can be made at any time and without notice, and in particular can be changed to take account of increased costs incurred by the Supplier as a result of import and other duty, taxes or levies imposed or charged by government or other bodies.
2. All prices stated shall be understood to be excluding tax, packaging and carriage and are based on delivery "ex works" in accordance with the Incoterms 2010.
3. All purchases shall be invoiced for inclusive of duty, tax, levies, charges and other applicable costs, together with any costs incurred in the case of exports for the completion of customs formalities.

Article 3 - Payment Terms

1. All payments shall be made without any deductions and in the currency shown on the invoice, unless specified otherwise in the Order Confirmation. The sale price for the goods and/or services must reach the supplier by no later than the due date of the invoice.
2. The Orderer shall only have a right to offset or withhold if its counterclaims have been ascertained by a court, are not disputed or have been recognized by the Vendor.
3. In the event of delayed payment by the Orderer, the Vendor shall be entitled to demand default interest of 8% points above base rate according to § 1 of the Discount Rate Transition Act. This shall not affect the Vendor's right to further claim for damage caused by the delay.

Article 4 - Reservation of Title

1. The goods supplied shall remain the property of the Vendor until such time as all current and future claims by the Vendor against the Orderer have been met, insofar as such claims are connected to the goods supplied.
2. The Orderer shall be entitled to sell on the goods belonging to the Vendor (provisional goods) in the ordinary course of business. However, the Orderer here and now assigns all rights to claim arising out of the said selling on to the Vendor, irrespective of whether the provisional goods were sold on before or after being processed or whether or not they are associated with real or moveable property. If, after processing or in conjunction with other goods not belonging to the Vendor, the provisional goods are sold on or associated with real or moveable property, then the Orderer's claim against its customer shall be deemed to have been assigned to the Vendor up to the delivery price of the provisional goods agreed between the Vendor and the Orderer. The Orderer shall remain entitled to exercise this right to claim even after assignment has taken place. This shall not affect the Vendor's right to exercise the claim itself. However, the Vendor undertakes not to exercise the claim as long as the Orderer complies properly with its payment obligations. If the Orderer exercises its right to claim, the Vendor shall be entitled to the proceeds obtained up to the amount of the delivery price of the provisional goods agreed between the Vendor and the Orderer.
3. If the goods are irrevocably mixed with other property not belonging to the Vendor, then the Vendor shall acquire joint ownership of the new item in that proportion which the value of the item sold (final invoice amount, including VAT) bears to the other mixed property at the time of mixing. If mixing occurs in such a way that the Orderer's item can be viewed as the main item, it is understood and agreed that the Orderer shall transfer part ownership to

the Vendor. The Orderer shall safeguard the sole or joint ownership thus acquired on behalf of the Vendor. The processing or conversion of the goods supplied by the Orderer shall always be carried out on behalf of the Vendor. If the item sold is processed with other property not belonging to the Vendor, then the Vendor shall acquire joint ownership of the new item in that proportion which the value of the item sold (final invoice amount, including VAT) bears to the other processed property at the time of processing. The same shall apply in respect of the product produced as a result of processing, as in respect of the item sold with reservation of title.

4. The Vendor undertakes, upon request from the Orderer, to release the available security where the realizable value of the security exceeds the claims to be secured by more than 10 %.

Article 5 - Delivery

1. All deliveries under the contract shall be subject to the Incoterms 2010/any subsequent versions thereof published by the International Chamber of Commerce, and to all special delivery conditions for products set out in the order confirmation. In the event of a conflict between the Incoterms and a provision of the contract, the latter shall prevail.
2. The Supplier shall make every effort to deliver the goods and/or services on the dates specified in the order confirmation, however the Supplier shall not be liable if delivery is not made on time, whatever the reason. The Supplier shall be entitled to make partial deliveries.
3. The Supplier's weights and measurements shall apply, unless there is proof that these are not correct.
4. The Purchaser shall check goods and/or services for quality and quantity immediately upon delivery by the Supplier.

Article 6 - Transfer of Risk

When the goods are handed over to the forwarding agent, carrier or other transporters, the risk of loss or damage shall pass to the Purchaser. This shall also apply in the case of delivery free to the Purchaser's door.

Article 7 - Packaging

Where an order confirmation states that the packaging of products is/remains the property of the Supplier and is to be returned to the Supplier, the Purchaser shall deliver the said packaging empty and at its own risk and expense to the place specified by the Supplier and shall notify the Supplier of the date of sending. All packaging which is not returned properly and in good condition within a reasonable period shall be replaced by the Purchaser at the Supplier's standard replacement cost.

Article 8 - Health Risks and Safety

1. The Purchaser is aware that the goods to be supplied under the contracts pose a risk to health and/or the environment.
2. The Purchaser shall obtain extensive information about the nature of the health and environmental risks and about the proper and safe way to handle the goods and shall be responsible for keeping itself and all persons handling the said goods after delivery by the Supplier, fully informed about them.

Article 9 - Warranty

1. The Supplier warrants that the goods and/or services supplied comply with the technical specifications set out in the order confirmation at the time of delivery. No other warranties, express or implied, are given by the Supplier with regard to goods or services. Warranties which might apply under a law or regulation, including warranties of marketability or suitability for a specific use or purpose, are excluded.
2. Claims for defects by the Orderer shall be subject to the Orderer complying properly with its obligations to inspect and report defects in accordance with §§ 377, 378 HGB.
3. Where complaints in respect of defects are justified, subsequent performance shall, at the Vendor's option, take the form of rectification of the defect or the provision of a non-defective item. If the subsequent performance is not successful, the Orderer shall be entitled to reduce the price or, at its option, to terminate the contract.
4. Claims for defects shall become time-barred 12 months after the risk is transferred. This provision shall not apply where the law specifies longer periods pursuant to § 478 and § 479 BGB.

Article 10 - Exclusion of and Restrictions on Claims for Damages

1. We shall be liable in accordance with the statutory provisions where the Purchaser makes claims for damages which are based on willful or gross negligence, including the willful or gross negligence of our agents or subcontractors. Provided that we are not held liable for willful breach of contract, liability for damages shall be limited to the foreseeable damage which might typically occur.
2. We shall be liable in accordance with the statutory provisions where we negligently breach a significant contractual duty; in this case, liability for damages shall be limited to the foreseeable damage which might typically occur.
3. This shall not affect our liability for negligent harm to life, limb or health; this shall also apply in respect of presumed liability under product liability legislation.

4. We shall not be liable unless stated otherwise above.

Article 11 – Equipment

Where the Vendor has supplied the Purchaser with the equipment, whether by way of leasing, for testing or on any other basis, the Vendor shall remain the owner and holder of all other rights to the equipment for the whole of the period at the Vendor's premises, unless expressly agreed otherwise in writing.

Article 12 - Force majeure

The Supplier shall not be liable for delays or non-performance of a term or condition in the order confirmation, contracts or other obligations, where the said delay or non-performance is caused by or the result of an occurrence which is beyond the Supplier's control. This shall include, but not be confined to, the following: (i) strikes, industrial unrest, (ii) non-availability or shortage of raw materials or process materials, (iii) transport problems, (iv) in cases where the Supplier is not the manufacturer of the product being sold to the Purchaser, where the product is not being supplied by its usual supplier for whatever reasons, and where there is a change in the product attributable to the manufacturer, which could not have been foreseen by the Supplier at the time of the quotation, estimate or order confirmation.

Article 13 - Confidentiality

Technical, commercial, industrial and other information and details relating to the Supplier's business, including but not limited to the Supplier's formulae, product specifications, outputs, plans, programs, procedures, products, costs, operational procedures and clients, of which the Purchaser, the Purchaser's associated companies, managers or staff become aware during the performance of the contract, shall be treated as the confidential property of the Supplier and shall only be used by the Purchaser in support of the contract and shall not be disclosed to third parties, which shall also include government and other authorities, either during or after the period of the contract, without obtaining the prior, written consent of the Supplier in every case. All written information provided to the Purchaser by the Supplier and other accessible media shall be returned to the Supplier either upon first being requested to do so by the Supplier or at the end of the contract.

Article 14 - Applicable Law / Disputes

1. All contracts and documents, to which these General Terms and Conditions of Sale apply, shall be subject exclusively to German law.
2. The place of jurisdiction for all disputes between the parties to the contract shall be the place where the Vendor has its registered office.
3. It is expressly stipulated that the United Nations Convention on Contracts for the International Sale of Goods 1980 (CISG) shall not apply.