

## **General Terms and Conditions of Sale and Delivery Vertilas GmbH**

### **1. General, Scope of Application**

**1.1.** The following General Terms and Conditions of Sale and Delivery Vertilas GmbH (hereafter referred to as “**Terms and Conditions**”) will apply exclusively, and any additional or deviating terms by the customer will not be recognized unless Vertilas GmbH provides its express consent in writing. The Terms and Conditions will also apply, if Vertilas GmbH provides the product or services unconditionally despite the knowledge of the customer’s terms which are in addition to, deviate from or are contrary to the Terms and Conditions. The Terms and Conditions will also apply to future contracts between Vertilas GmbH and the customer.

**1.2.** All agreements regarding the delivery of products and services (hereinafter collectively referred to as “**PRODUCT(S)**”) between Vertilas GmbH and the customer must be in writing and signed by each party. Transmission via means of telecommunication, in particular by fax or e-mail, is sufficient for compliance with the written form requirement.

**1.3.** These Terms and Conditions apply only to entrepreneurs in the sense of § 310 section 1 German Civil Code (hereinafter also referred to as “**BGB**”).

### **2. Offer and Conclusion of Transactions, Reservation of Right of Modification**

**2.1.** If an order of the customer can be classified as an offer according to § 145 BGB, Vertilas GmbH can accept this offer within four weeks after receipt. Offers by Vertilas GmbH will not be binding, unless they are expressly designated as binding or contain a specific acceptance period.

**2.2.** Vertilas GmbH can accept the offer by written declaration or by delivery of the **PRODUCT**.

**2.3.** The written contract concluded between the parties, including these Terms and Conditions, is solely decisive for all legal relationships between Vertilas GmbH and the customer. Such contract fully reflects all agreements between the contracting parties concerning the subject matter of the contract. Oral commitments made prior to the conclusion of this contract are legally non-binding and any and all oral agreements between the contracting parties are superseded by the written contract unless expressly stated in a specific case that they remain in effect.

**2.4.** Any and all additions and amendments to agreements between the parties, including these Terms and Conditions, must be in writing to be effective. With the exception of managing directors or authorised signatories, the employees of Vertilas GmbH are not entitled to make agreements deviating from any agreement that has been concluded.

**2.5.** Information provided by Vertilas GmbH regarding the subject of the respective supply of a **PRODUCT** (e.g., weights, dimensions, utility values, load capacity, tolerances and technical data), as well as representations thereof (e.g., drawings and illustrations), are only approximate unless the fitness for the contractually intended purpose requires exact conformity. They are not guaranteed characteristics, but descriptions or designations of the supply of the **PRODUCTS**. Deviations customary in the trade, and deviations which occur due to legal regulations or represent technical improvements, as well as the replacement of components by equivalent parts, are permissible provided that they do not impair usability for the contractually intended purpose.

**2.6.** Vertilas GmbH reserves ownership or copyright in and to all offers and cost estimates submitted by Vertilas GmbH as well as drawings, illustrations, calculations, brochures, catalogues, models, tools and

other documents and aids made available to the customer. The customer may not share any of the foregoing, as such or their content, with third parties, disclose them, use them itself or via third parties, or reproduce them, without the express consent of Vertilas GmbH. Upon request of Vertilas GmbH, the customer must return such items in full to Vertilas GmbH and destroy any copies that may have been made if they are no longer required by it in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. The foregoing does not apply to the storage of data provided electronically for normal back-up purposes.

### **3. Supply and Performance Period, Delayed Delivery**

**3.1.** Partial deliveries are permitted, and oblige the customer to pay a proportionate share of remuneration, if

- the partial delivery may be used by the customer within the scope of the contractual purpose;
- delivery of the remaining ordered PRODUCTS is assured; and
- the customer does not incur any considerable additional expenditure or additional costs as a result (unless Vertilas GmbH commits to bear such costs).

**3.2.** In case Vertilas GmbH's performance as agreed in the contract is to be rendered upon request, the customer - unless otherwise agreed - shall be obliged to accept any partial performances of approximately similar amounts. Further, full performance as agreed shall be deemed requested by the customer one month after the agreed period for request has elapsed or if there is no such agreement, three calendar months after closing of the contract.

**3.3.** Performance deadlines indicated by Vertilas GmbH are non-binding and subject to change unless expressly agreed otherwise in relevant agreement.

**3.4.** The beginning of a delivery time given by Vertilas GmbH presupposes the clarification of all technical questions.

**3.5.** Compliance with the delivery obligation requires the timely and proper fulfillment of the obligation of the customer. The defence of lack of performance of the contract is reserved.

**3.6.** If shipment has been agreed, delivery periods and delivery dates shall refer to the time of handover to the forwarding agent, carrier or other third party commissioned with shipment.

**3.7.** Force majeure events that make the respective supply of a PRODUCT by Vertilas GmbH considerably more difficult or impossible entitle Vertilas GmbH to withdraw from the contract unless the hindrance concerned is only temporary. In the case of hindrances that are only temporary in nature, the respective delivery or performance deadlines shall be extended or the delivery or performance dates shall be postponed for the duration of the hindrance plus a reasonable lead time. If the customer cannot reasonably be expected to accept the supply of the respective PRODUCT as a result of the delay, it may withdraw from the contract by providing written notice to Vertilas GmbH without undue delay. Events of force majeure are events which completely prevent or unreasonably impede the provision of a PRODUCT and which are not attributable to Vertilas GmbH, e.g. legal strikes or legal lockouts, war, import and export bans, energy and raw material shortages, official measures/facts, epidemics, pandemics, delayed supply of merchandises to Vertilas GmbH itself, for which it is not responsible, despite proper congruent coverage by Vertilas GmbH.

**3.8.** If Vertilas GmbH is in default of a supply of a PRODUCT, or a supply of a PRODUCT becomes impossible for Vertilas GmbH, regardless of grounds, liability on the part of Vertilas GmbH for damages is limited as provided in Section 10 of the Terms and Conditions.

**3.9.** If the acceptance by the customer is delayed or if he violates any other of his cooperative duties culpably, Vertilas GmbH can claim compensation for the damages incurred, including any additional expenses. The risk of an accidental destruction or deterioration of the subject of the contract will pass to the customer on the date on which the customer delays the acceptance of the subject of the contract. Storage costs after the passage of risk shall be borne by the customer. In the case of storage by Vertilas GmbH, storage costs will equal 0.25% of the invoice amount of the supplied items to be stored per full week. This is without prejudice to the right to assert and prove higher or lower storage costs.

#### **4. Prices, Terms of Payment, Delay, Set-off, Right of Retention**

**4.1.** Prices are valid for the scope of PRODUCTS listed in the order confirmation. Additional or special services will be charged separately. The prices are stated ex works plus packaging, statutory value added tax, customs duties for export shipments as well as fees and other public charges.

**4.2.** The Vertilas GmbH list prices valid at the time of shipment shall apply (in each case less an agreed percentage or fixed discount) in cases in which agreed prices are based on Vertilas GmbH's list prices and shipment is to be made more than four months after conclusion of the contract.

**4.3.** Payment is due without deduction within 30 days after invoice date. Payment is in time, if the invoice amount is credited to Vertilas GmbH's bank account indicated on the invoice. Payment by cheque or bill of exchange is not permitted unless agreed separately in a specific case. If the customer does not pay on the due date, all outstanding amounts shall bear interest at 5 % p.a. from the due date. This is without prejudice to the right to claim a higher interest rate and to assert further damages in the event of default.

**4.4.** Vertilas GmbH reserves the right to demand advance payments.

**4.5.** In cases in which - after closing of the contract - doubts arise regarding the customer's ability to pay Vertilas GmbH's claims or his creditworthiness Vertilas GmbH is entitled to render performance only after the customer's performance or versus collateral in the form of a directly enforceable, irrevocable guarantee from a German major bank. In case the customer does not comply with this request even after fixing a time period for performance including a notice of the intention to rescind the contract after the set period of time, Vertilas GmbH may rescind the contract, excluding any rights for compensation of the customer.

**4.6.** A set-off based on counterclaims of the customer, or withholding payment on the basis of such claims, is only permitted in cases in which the counterclaims concerned are undisputed or have been finally determined by a court.

#### **5. Customer's Responsibilities, Acceptance**

**5.1.** The customer must make available to Vertilas GmbH all documents required for the performance of the subject of the contract free of cost and in a timely manner. Vertilas GmbH is not obliged to check the content of the documents made available by the customer as well as such designated requirements (specifications, functions, and technical details) for potential flaws or infringements of third party rights following the implementation of the specified requirements, unless otherwise agreed expressly.

**5.2.** Insofar as the customer renders own services or services are rendered by third parties (including the delivery of PRODUCTS) the customer is responsible for the co-ordination of the individual work processes as well as the compliance with applicable safety regulations and provisions for prevention of accidents.

**5.3.** In case the customer does not render his co-operation duties to the required extent or Vertilas GmbH

is inhibited in rendering the agreed due to circumstances within the contacting partner's risk, Vertilas GmbH is exempt from the performance obligations for the duration of the impediment and to the extent of its impact and may ask for reasonable compensation for any additional costs incurred hereby. Vertilas GmbH in that case will set off any expenses saved or amounts received from other orders. The risk of accidental loss or accidental deterioration of the PRODUCTS is transferred to the customer at the time he is in default with accepting delivery.

**5.4.** In cases in which acceptance is required, the PRODUCT shall be deemed accepted if

- the supply and, if Vertilas GmbH also is obliged to perform installation, the installation has been completed;
- Vertilas GmbH has notified the customer accordingly including a reference to deemed acceptance based on this Section 5.4 and requests acceptance by the customer;
- twelve working days have elapsed since delivery or installation, or six working days have elapsed since delivery or installation in case in which the customer has started to use the PRODUCT; and
- the customer has failed to accept the PRODUCTS within the respective period for on grounds other than a defect reported to Vertilas GmbH which makes use of the PRODUCT impossible or significantly impairs such use.

## **6. Place of Performance, Dispatch, Packaging, Transfer of Risk, Transport-insurance**

**6.1.** Vertilas GmbH's registered office is the place of performance for all obligations arising from the contractual relationship unless stated otherwise. If Vertilas GmbH is also obliged to provide installation services, the place of performance is the place where such installation is to be performed.

**6.2.** The mode of shipment and packaging are subject to the reasonable exercise of discretion on the part of Vertilas GmbH.

**6.3.** At the latest, risk passes to the customer when the PRODUCT is made available to the customer or the freight forwarder, carrier, or agent at Vertilas GmbH's premises. This also applies in the case of partial deliveries or in cases in which Vertilas GmbH has agreed to provide other services (e.g., shipment or installation). If shipment or transfer is delayed due to a circumstance for which the customer is at fault, risk passes to the customer on the day on which the PRODUCT is ready for shipment and Vertilas GmbH has notified the customer accordingly.

**6.4.** Vertilas GmbH will only insure a shipment against theft, breakage, transport, fire and water damage, or other insurable risks, at the customer's express request and at its expense.

## **7. Guarantee of Retention of Title**

**7.1.** Vertilas GmbH will retain title to the PRODUCTS until all payments under the entire business connection have been received. In the case of violation of the contractual obligations by the customer, in particular in case of delayed payment, Vertilas GmbH will have the right to repossess the PRODUCTS. The repossession of the PRODUCTS by Vertilas GmbH will constitute a rescission of the agreement. After return of the PRODUCTS, Vertilas GmbH is authorised to utilise them, and the proceeds from utilisation shall be credited against the liabilities of the customer – minus appropriate utilisation costs.

**7.2.** The customer must handle the PRODUCTS with due care; in particular, he must adequately insure them at his own expense against damage by fire, water or theft at their replacement value. If maintenance and inspection work is necessary, it must be carried out at the customer's own expense in sufficient time.

**7.3.** In the case of pledgings or similar acts by third parties, the customer must inform Vertilas GmbH immediately in writing so that Vertilas GmbH can bring a legal action as provided for in § 771 German Civil Procedure Code (hereinafter also referred to as “ZPO”). If the third party is not able to reimburse Vertilas GmbH for court and extrajudicial costs of the legal action as provided for in § 771 ZPO, the customer will be liable for the loss incurred by Vertilas GmbH.

**7.4.** The customer is entitled to re-sell the PRODUCTS in an orderly business transaction; however, the customer already assigns at this point all receivables amounting to the final sum of the invoice (including VAT) of the receivable of Vertilas GmbH that he gains from the re-sale to his customer or third parties. This is the case irrespective of whether the PRODUCT was resold without or after processing. The customer remains authorised to collect this receivable even after assignment of the receivable. The authorisation of Vertilas GmbH to collect this receivable itself, remains unaffected by this. However, Vertilas GmbH undertakes not to collect this receivable as long as the customer meets payment obligations from the revenues collected, does not have any payment arrears and in particular has not applied for composition or bankruptcy proceedings or if payment has been stopped. However, if this is the case, Vertilas GmbH can request that the customer of Vertilas GmbH reveals the assigned receivables and their debtors, provides all information required for collection, hands over the corresponding documents and informs the debtors (third parties) of the assignment.

**7.5.** The processing or alteration of the PRODUCT by the customer will be done for Vertilas GmbH at all times. If the PRODUCT is processed with other objects that do not belong to Vertilas GmbH, Vertilas GmbH acquires the co-ownership of the new object in the ratio of the value of the PRODUCT (final invoice amount, including VAT) to the other processed objects at the time of processing. For the rest, the same applies to the object, created by processing, as for the PRODUCT supplied under reservation.

**7.6.** If the PRODUCT is inseparably mixed with other objects that do not belong to Vertilas GmbH, Vertilas GmbH acquires the co-ownership of the new object in the ratio of the value of the PRODUCT (final invoice amount, including VAT) to the other mixed objects at the time of mixing. If the mixing is done in such a way that the object of the customer may be viewed as the main object, it is agreed that the customer will transfer a pro-rata co-ownership to Vertilas GmbH. The customer is the custodian of the sole or co-ownership created in this way for Vertilas GmbH.

**7.7.** The customer also assigns to Vertilas GmbH the receivables for securing the receivables against the customer attributed to Vertilas GmbH that the customer acquires through the combination of the PRODUCT with a plot of land vis-à-vis a third party.

**7.8.** Vertilas GmbH undertakes to release the securities attributed to Vertilas GmbH at the request of the customer in so far as the realisable value of the securities of Vertilas GmbH exceeds the receivables to be secured by more than 10%; the selection of the securities to be released is the responsibility of Vertilas GmbH.

## **8. Liability for defects, defects**

**8.1.** The warranty period is one year from delivery or, if acceptance is required, from acceptance. However, the limitation period does not apply to claims for damages by a customer due to injury to life, limb or health or due to an intentional or grossly negligent breach of duty by Vertilas GmbH or its vicarious agents; all such claims are governed by the applicable statutory limitations periods.

**8.2.** PRODUCTS which have been shipped must be carefully examined immediately after receipt by the customer or to the third party designated by the customer. With regard to patent defects or other defects that would have been discovered following an immediate, careful inspection, such defects are deemed to have been approved by the customer if Vertilas GmbH does not receive a written notice of the defect concerned within seven business days after receipt. With regard to other defects, the PRODUCTS are deemed to have been approved by the customer if Vertilas GmbH does not receive notification of defects within seven business days after the time at which the defect became apparent. If the defect concerned would have already been identifiable by the customer at an earlier time in the course of normal use, such earlier time is decisive for the beginning of the notification period. At the request of Vertilas GmbH, a rejected PRODUCT must be returned to Vertilas GmbH carriage paid. Vertilas GmbH will reimburse the costs for the least expensive shipping method in the case of a legitimate notice of a defect. This does not apply if the costs are higher because the PRODUCT is located at a place other than the place of intended use.

**8.3.** In the event of material defects of the PRODUCT, Vertilas GmbH is initially obliged and entitled, based on a choice to be made by Vertilas GmbH, to rectify the defects or to make a replacement delivery within a reasonable period of time. The customer may withdraw from the contract or reduce the purchase price appropriately in the event that attempts at cure fails i.e., impossibility, unreasonableness, refusal or unreasonable delay in the repair or replacement delivery.

**8.4.** If a defect is due to fault on the part of Vertilas GmbH, the customer can demand compensation for damages only under the conditions specified in Section 10 of these Terms and Conditions.

**8.5.** In the event of defects related to components from other manufacturers that Vertilas GmbH cannot remedy for licensing-related reasons or practical reasons, Vertilas GmbH will, at its option, either assert its warranty claims against the manufacturers and suppliers concerned for the account of the customer or assign such claims to the customer. In the case of any such defects, warranty claims may only be asserted against Vertilas GmbH on the basis of other applicable requirements and these Terms and Conditions if the legal enforcement of the above-mentioned claims against the manufacturers and suppliers was unsuccessful or would be futile due to circumstances such as insolvency. The statute of limitations applicable for the customer to assert its warranty claims against Vertilas GmbH for the relevant defects is tolled during the pendency of litigation.

**8.6.** Warranty coverage no longer applies if the customer modifies the PRODUCT, or has it modified by third parties, without the consent of Vertilas GmbH and curing defects becomes impossible or unreasonably difficult as a result. In any event, the customer shall bear the additional costs of curing the defect resulting from any such modifications.

**8.7.** The supply of used PRODUCTS agreed in any specific case is made subject to the exclusion of any warranty for material defects.

## **9. Industrial property rights**

**9.1.** In accordance with this Section 9, Vertilas GmbH warrants that the PRODUCT is free of third-party industrial property rights or copyrights arising under German Law. Each party must notify the other party in writing without undue delay if claims are asserted against it based on an alleged infringement of such rights.

**9.2.** In the event that the PRODUCT infringes an industrial property right or copyright of a third party, Vertilas GmbH will, at its discretion and at its expense, (a) modify or exchange the PRODUCT in such

a way that third-party rights are no longer infringed but such that the PRODUCT continues to fulfil the contractually agreed functions or (b) procure the right of use for the customer by concluding a licence agreement. The customer is entitled to withdraw from the contract, or to reduce the purchase price appropriately, if Vertilas GmbH is not able to do so within a reasonable period. Any claims for damages on the part of the customer are subject to the restrictions of Section 10 of these Terms and Conditions.

**9.3.** In the case of infringements caused by products of other manufacturers (co-)supplied by Vertilas GmbH, at its option, Vertilas GmbH will either assert its claims against the manufacturers and sub-suppliers for the account of the customer or assign such claims to the customer. In such cases, claims may only be asserted against Vertilas GmbH according to this Section 9 if the legal enforcement of the above-mentioned claims against the manufacturers and sub-suppliers was unsuccessful or would be futile due to circumstances such as insolvency.

## **10. Liability for damages based on fault**

**10.1.** Provided that liability is based on fault, liability for damages on the part of Vertilas GmbH, regardless of legal grounds, in particular for impossibility, delay, defective or incorrect delivery, breach of contract, breach of obligations during contract negotiations and tort, is limited in accordance with this Section 10.

**10.2.** In cases in which Vertilas GmbH is liable for damages on the merits, such liability is limited to damages which Vertilas GmbH foresaw as a possible consequence of a breach of contract upon the conclusion of the contract or which Vertilas GmbH should have foreseen in the application of the customary degree of care. Indirect damages and consequential damage resulting from defects in the delivery item shall likewise only be compensable to the extent that such damage is typically to be expected when the delivery item is used as intended.

**10.3.** In the event of liability for simple negligence, the obligation of Vertilas GmbH to pay compensation for property damage, and any additional financial losses resulting therefrom, is limited to EUR 25,000.- per loss event and to EUR 100,000.- in total, even in cases where the breach of an essential contractual obligation is concerned.

**10.4.** The preceding exclusions and limitations on liability apply to the same extent for the benefit of Vertilas GmbH's executive bodies, legal representatives, employees and other agents and affiliates.

**10.5.** In cases where Vertilas GmbH provides technical information or acts in an advisory capacity, and such information or advice is not part of the contractually agreed scope of services owed by Vertilas GmbH; this is done at no charge and to the exclusion of any liability.

**10.6.** The limitations of this Section 10 do not apply to liability for wilful misconduct, for guaranteed characteristics, for injury to life, limb or health or under the Product Liability Act.

## **11. Reimbursement of futile expenses**

Claims of the customer for compensation of futile expenses according to § 284 BGB are excluded.

## **12. Intellectual property**

**12.1.** If Vertilas GmbH makes inventions in the course of the business relationship with the customer, Vertilas GmbH shall be entitled to the sole exploitation of the rights derived therefrom, in particular patents.

**12.2.** The customer agrees that Vertilas GmbH's sale of PRODUCTS does not grant to the customer any license or intellectual property or similar right applicable to or in any PRODUCTS, or in any information or documents (including estimates, projections, drawings, electronic files, calculations, or instructions) Vertilas GmbH provides to the customer, and the customer waives any and all such rights. Vertilas GmbH and its affiliates retain ownership in and control over all intellectual property, including patents, trademarks, trade names, copyrights, know-how, and goodwill applicable to or arising out of a PRODUCT.

**12.3.** The customer shall not name or designate any Vertilas GmbH information or PRODUCT in any patent application. The customer may not alter or remove, and will abide by, any patent, trademark, copyright, trade secret, proprietary or other notices, serial numbers, labels, tags or other identifying marks, symbols or legends contained on or in a PRODUCT (including containers or packages). If the customer acquires any intellectual property or similar rights in or relating to any PRODUCTS purchased from Vertilas GmbH (including any rights in any trademarks, derivative works or patent improvements relating thereto), by operation of law, or otherwise, then such rights are deemed and are hereby irrevocably assigned to Vertilas GmbH or its licensors, as the case may be, without further action by either Vertilas GmbH or the customer. The customer will sign any assignments or similar instruments confirming Vertilas' ownership of intellectual property rights relating the PRODUCTS, including inventions Vertilas GmbH makes in the course of the business relationship with the customer, at Vertilas' GmbH reasonable request.

### **13. Liability for conflict and hazardous materials**

Vertilas GmbH strives to keep all PRODUCTS manufactured by Vertilas GmbH free of conflict minerals within the meaning of the applicable version of the Dodd-Frank Act (tantalum, tin, gold and tungsten from the DR Congo or its neighbouring countries) as well as of hazardous substances in impermissible concentrations (e.g., in accordance with the Electrical and Electronic Equipment Ordinance). Accordingly, Vertilas GmbH likewise endeavours to oblige suppliers of Vertilas GmbH to ensure that the PRODUCTS purchased from suppliers of Vertilas GmbH do not contain any of the aforementioned conflict materials or hazardous substances in impermissible concentrations. However, the assumption of a warranty obligation, as well as any liability on the part of Vertilas GmbH for materials used by supplies of Vertilas GmbH or its suppliers, is excluded to the extent permitted and Vertilas GmbH does not make any representations or warranties that its PRODUCTS are free of such conflict minerals. Vertilas GmbH shall not have any liability to the customer or any other person or entity if any of its PRODUCTS contain any conflict minerals.

### **14. Instructions for use**

It is expressly pointed out to the customer that the PRODUCTS supplied by Vertilas GmbH may not be used in medical electrical equipment, in military installations, weapons, or weapons systems, or in any nuclear applications. If any PRODUCT is used in any such equipment, systems, or applications, all of Vertilas' warranties and obligations with respect to this PRODUCT shall be void automatically, to the extent permitted by law, and Vertilas shall have not responsibility or liability for it.

### **15. Miscellaneous**

**15.1.** In so far as the customer is a merchant, exclusive venue for all disputes arising between Vertilas GmbH and the customer shall be the courts having jurisdiction for the Vertilas's GmbH registered office. Vertilas GmbH shall also be entitled, however, to take legal action before the competent court having jurisdiction for the customer's registered office. Indispensable, legally regulated exclusive places of jurisdiction shall remain unaffected by this provision.

**15.2.** In so far as the order confirmation does not expressly state otherwise, the registered office of Vertilas GmbH in the Federal Republic of Germany is the place of performance.

**15.3.** The laws of the Federal Republic of Germany, excluding its conflicts of law principles, shall govern all contracts and transactions between Vertilas GmbH and the customer, all PRODUCTS Vertilas GmbH sells, and any matter, dispute or controversy arising out of or relating to any such contract, transaction, PRODUCTS provided by Vertilas GmbH. The application of the UN Convention on the International Sale of Goods (CISG) is excluded.

**15.4.** The customer shall be responsible for complying with all German export regulations and all foreign import regulations.

**15.5.** Reference is made to the fact that the customer must observe the currently valid ICAO/IATO regulations if it ships PRODUCTS purchased from Vertilas GmbH (shipment to the customer or a third party or return shipment to Vertilas GmbH).

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