

VAN LEEUWEN AUSTRIA GMBH TERMS AND CONDITIONS OF SALE AND DELIVERY <B2B>

Article 1 - Definitions

1.1 The term "Van Leeuwen" is understood to mean: VAN LEEUWEN AUSTRIA GMBH, FN 097366k, having its registered office and business address in Siegfried-Marcus-Straße 8, 2362 Biedermansdorf, Austria.

1.2 The term "Customer" is understood to mean: any entity within the meaning of § 1 UGB - businessman or legal entity or partnership (or other relation) which has entered into an agreement with Van Leeuwen, or which is negotiating an agreement with Van Leeuwen, in relation to the supply of services and/or products or in relation to rendering any other type of performance

1.3 The term "Parties" is understood to mean: Van Leeuwen and the Customer.

1.4 The term "Agreement" as used in these terms and conditions is understood to mean: any agreement between Van Leeuwen and the Customer, any amendment or addition thereto, as well as all acts (juristic and otherwise) undertaken to prepare and perform that agreement.

1.5 If the term "written" or "in writing" is used in these terms and conditions, this is understood to include all messages sent by email.

1.6 The term "Website" means: www.vanleeuwen.com.

Article 2 - Applicability

2.1 These General Terms and Conditions of Sale and Delivery (to be referred to hereinafter as "the Conditions") apply to – and constitute an integral part of – every quotation, offer, order confirmation, and invoice, as well as every Agreement concluded, for the supply of services and/or products between Van Leeuwen and the Customer – both existent and prospective.

2.2 The general and/or other terms and conditions used by the Customer – including the Customer's general purchasing terms and conditions – , in particular protection / defensive clauses, are hereby expressly rejected.

2.3 Deviations from, or amendments to, these Conditions must be confirmed expressly by Van Leeuwen in writing and will apply only to the relevant quotation/engagement/agreement.

Article 3 - General Provisions

3.1 Trade terms and Incoterms used in these Conditions, quotations, order confirmations, or otherwise must be interpreted in accordance with the version of the Incoterms published by the International Chamber of Commerce (ICC) that was in effect when the Agreement was formed.

3.2 If a written provision of an Agreement between the Customer and Van Leeuwen conflicts with a provision in these Conditions or with an applicable Incoterm, the written provision in the Agreement will prevail.

Article 4 - Agreements

4.1 The Agreement will be formed by a written confirmation by Van Leeuwen through either an order confirmation or through Van Leeuwen's actual performance of the engagement.

4.2 All offers, quotations, price lists, and other communications from Van Leeuwen are free of obligation and subject to confirmation, thus will not be binding on Van Leeuwen unless expressly agreed otherwise in writing. Oral commitments, agreements, and amendments, including additions to a written Agreement are subject to confirmation and thus will only be binding on Van Leeuwen if they are confirmed in writing by Van Leeuwen. In the event of any conflict between the Customer's representation (order or any statement, both oral and written) and Van Leeuwen's order confirmation, only Van Leeuwen's order confirmation prevails and is binding.

4.3 If, in Van Leeuwen's reasonable judgment, the Customer's financial situation so warrants, the Customer will be obliged, at Van Leeuwen's request, to make immediate payment in advance or furnish security for the sum owed to Van Leeuwen pursuant to the Agreement, in which respect Van Leeuwen will be entitled to suspend all or part of its performance of the Agreement until such payment is made or such security is furnished.

Article 5 - Secrecy

5.1 The Parties are obliged to observe secrecy with respect to all confidential information that they may have obtained from one another or from another source within the context of the Agreement. 'Confidential information' will at least be understood to include – but not be limited to – know-how, prices charged by Van Leeuwen, and the commercial arrangements made between the Parties.

5.2 The Parties will use any (confidential as well as non-confidential) information only to the extent necessary to perform the relevant Agreement and at the very least in accordance to and within the framework of data protection regulations.

Article 6 - Force Majeure

6.1 If Van Leeuwen is unable to perform or unable to perform in good time as a result of *force majeure*, the applicable delivery deadline will be extended by the duration of the *force majeure* situation.

6.2 The term '*force majeure*' as used in these Conditions will be understood to mean: any non-performance caused by circumstances that are outside the reasonable control of the non-performing party, which will at least include non-performance due to power outages, telecommunication disruptions, cybercrime, fire, import and export restrictions, strikes,

machine failures, and other commercial disruptions due to non-performance by third-party suppliers and other third parties involved with the performance of the Agreement.

6.3 In the event of *force majeure*, the Parties' obligations will be suspended. If the *force majeure* situation lasts longer than three months, either the Customer or Van Leeuwen may rescind the Agreement in writing, but only for those obligations that have not yet been performed. In such case, the Parties will have no right to claim rescission-related damages.

6.4 If, when the *force majeure* situation commences, Van Leeuwen has already performed part of its obligations, or is only able to perform part of its obligations, Van Leeuwen will be entitled to invoice separately for the obligations it has performed or will be able to perform.

Article 7 - Warranty

7.1 The products supplied by Van Leeuwen will be considered to comply with the Agreement if they possess the specifications that have been agreed in writing. Unless quality standards or alternative agreements are agreed in writing, the products must only meet the requirements of EU product laws as applied in Austria and / or stricter Austrian statutory regulations. The Customer may not derive any rights from any images, descriptions, and information about price, size, weight, and qualities of the products stated by Van Leeuwen or third parties in price lists, on websites, or in other various media publications. Van Leeuwen bears no responsibility for the products being fit for any purpose for which the Customer wishes to process, treat, or use such products (or to cause such products to be processed, treated, or used). Minor deviations and differences in quantity, quality, colour, size, weight, or finishing that are customary in the industry will never constitute a failure to perform.

7.2 Unless agreed otherwise, Van Leeuwen warrants that the products will meet the specifications agreed in the Agreement for a period of 12 months after delivery. This warranty will not prejudice Van Leeuwen's invocation of the other provisions of this article or *force majeure*.

7.3 To the extent that the warranty regards products which Van Leeuwen has obtained from a third party are involved, the warranty is limited to any warranty that the third party has extended to Van Leeuwen in respect of those products.

7.4 The Customer may only invoke the warranty after he has met all of his payment obligations to Van Leeuwen.

Article 8 - Delivery / Risk of Transport

8.1 Unless expressly agreed otherwise, delivery will be made ex works (Incoterms) or free carrier (Incoterms) at Van Leeuwen's option. The agreed (Article 4.1) delivery times and dates are only indicative and will never be deemed to be absolute deadlines. Missing a deadline will not entitle the Customer to rescind the Agreement or to any form of compensation whatsoever. In any case the danger of accidental destruction or accidental deterioration of the products is transferred to the Customer at the time of handing over the products to the shipping agent, the carrier, or the persons or institution otherwise decided on for implementing the dispatch, at the latest when the products leave Van Leeuwen's premises (works or storing place). Van Leeuwen procures transport insurance only upon the Customer's expressed order (Article 9.1).

8.2 If delivery cannot be made at the agreed time or within the agreed term, Van Leeuwen will be entitled to make partial deliveries and the Customer waives all rights and / or claims for damages and will afford Van Leeuwen a reasonable time to still perform the delivery by serving Van Leeuwen with a notice of default.

8.3 The Customer will be obliged to accept delivery of the products immediately as soon as they are ready for the Customer and Van Leeuwen has notified the Customer of this fact. Non-performance of this obligation will entitle Van Leeuwen to store the products at the Customer's risk and expense or to keep them stored and invoice the Customer for same, without prejudice to Van Leeuwen's other rights. In such cases, the Customer cannot refuse payment on the grounds that delivery has not yet taken place.

8.4 If Van Leeuwen is, in the absence of fault, unable to deliver to the place of delivery specified by the Customer on the predefined route, using the predefined method or within predefined time, Van Leeuwen is entitled to change route and / or method and / or place of delivery. Incremental costs shall be borne by the Customer as Van Leeuwen by notification enables the Customer an opportunity to make representations within reasonable time, at latest within 5 days, and either the Customer confirms in written or waives the right to make representations expressed or implied by lapse of time.

8.5 To the extent the Customer is obliged to unload the products, he is obliged to do so immediately. The Customer will always ensure that proper unloading equipment and skilled personnel are available. The provisions of paragraph 3 of this article will apply *mutatis mutandis* upon the failure to perform this obligation (or these obligations). Packaging remains at the Customer-site (non-returnable; Article 9.1).

Article 9 - Prices and payment

9.1 The prices indicated by Van Leeuwen are based on the information provided in the request and subject to confirmation (Article 4.2). All prices are exclusive of VAT, any other levies (including import or export duties), non-returnable packaging (at cost price) shipping, transport insurance and thus are based on delivery ex works.

9.2 If one or more cost-price factors are subjected to increase after the Agreement date (Article 4.1) but before delivery, Van Leeuwen will be entitled to increase the agreed price accordingly.

9.3 Payments must be received within the stipulated date of payment - unless otherwise agreed, payments are to be made immediately upon receipt of invoice without deductions and free of bank charges. Alternative payment arrangements must be agreed in writing. The Customer's right to settle its obligations against any claims it may have in respect of Van Leeuwen is expressly excluded. Payment must be made in the same currency used in the invoice.

9.4 The applicable payment deadline (9.3) is an absolute deadline; failing to meet this deadline will place the Customer immediately in default. Should Van Leeuwen consider the Customer's financial situation to be poor, or if the Customer has

filed for bankruptcy or a suspension of payment, or has been declared bankrupt or granted a suspension of payment, then the Customer will immediately be in default and all of Van Leeuwen's claims against the Customer will become immediately due and payable. Deductions are subject to the condition precedent of timely payment (9.3) thus are, in case of default, as herein before mentioned, null and void.

9.5 The Customer will owe 1 % per month default interest or the higher statutory interest rate (§ 456 UGB) with effect from the date of default referred to in paragraph 4 of this article. If Van Leeuwen must take judicial or extrajudicial measures in connection with late payment, all of the costs ensuing from those measures will be borne by the Customer, which costs will be deemed to be at least 15 % of outstanding claim, with a minimum of EUR 250, without prejudice to Van Leeuwen's right to claim full damages.

9.6 If the Customer fails to meet any of its obligations pursuant to the Agreement formed with Van Leeuwen or related agreements ensuing therefrom, or fails to do so in full, properly, and in good time, Van Leeuwen will be entitled, without any notice of default being required, either to suspend performance of the Agreement or to rescind the Agreement in full or in part, without incurring any liability to pay any form of damages and without prejudice to any of the other rights accruing to it.

Article 10 - Complaints and Liability / Warranty and Damages

10.1 The Customer must check the products for any deviations from the agreed specifications immediately after delivery. Any instances of non-conformity must be noted on the bill of lading or consignment note. Van Leeuwen must be notified in writing of these instances of non-conformity, as well as any other defects visible upon delivery, within 5 working days after delivery. The Customer must notify Van Leeuwen in writing of invisible defects within 5 working days of the date on which these defects were discovered or should have been discovered.

10.2 If a defect is not reported to Van Leeuwen within the prescribed term or in good time, the Customer will be precluded from demanding performance in respect of that defect. The Customer must keep defective products available for Van Leeuwen and afford Van Leeuwen the opportunity to inspect the products on site or transfer, on the Customer's own expense, defective products or parts / samples of defective products to Van Leeuwen's premises. The submission of a complaint will not entitle the Customer to a suspension of its payment obligations.

10.3 Van Leeuwen's obligations in the event of defects in the products and/or services supplied will be limited, at Van Leeuwen's option, to repair, replacement, or crediting of the invoice amount relating to the defective products and/or services.

10.4 If Van Leeuwen provides advice regarding the use, features, or suitability of the products, this advice will be based on the best of Van Leeuwen's knowledge. However, Van Leeuwen will bear no liability in respect of the erroneousness and/or incompleteness of such advice. Van Leeuwen will never be liable for: a. indirect and consequential harm incurred by the customer's conduct and/or loss: including stagnation losses, fines, manufacturing losses, travel and accommodation expenses, lost profit and turnover, transport costs, the costs of installation or de-installation, loss of goodwill, damages (including fines) owed to third parties, or delay-related losses; b. damage to products in the custody of the Customer: such as damage inflicted on other products during the performance of the work; c. harm or loss caused by an intentional act or omission or deliberate recklessness on the part of customer staff; d. non-performance due to *force majeure* as described in these Conditions.

10.5 The performance of the Agreement will be rendered exclusively to benefit the Customer. Third parties may not derive any rights from such performance. The Customer will indemnify Van Leeuwen against all third-party claims for damages or otherwise, as well as all costs or harm/loss Van Leeuwen has incurred or will incur in relation to such claims, which ensue directly or indirectly, or relate to, products and/or services which Van Leeuwen has sold, delivered, or will deliver to the Customer, including any work or advice.

10.6 The Customer's right to invoke a product defect will lapse if the product has been exposed to abnormal circumstances, has not been used in accordance with the instructions for use or has otherwise been carelessly or inexpertly handled, has been changed or has had work performed on it, or if the quality of the product has been compromised due to being stored for a longer period than is customary.

10.7 Any legal claim the Customer has against Van Leeuwen will expire simply by the passing of one (1) year after the event that resulted in the claim. Contrary to the statutory expiry term, the expiry term for all claims and defences against Van Leeuwen and third parties which Van Leeuwen has involved in the performance of the Agreement, is one (1) year.

10.8 Liability to damages or the obligation to indemnify Van Leeuwen pursuant to any statutory ground is therefore limited to a maximum of 15 % of the total sum for the engagement (excluding VAT). If the Agreement consists of parts or partial deliveries, the liability to damages will be limited to a maximum of 15 % of the total sum of the engagement relating to that part or partial delivery which caused the harm/loss (excluding VAT).

10.9 Van Leeuwen's employees, managing directors, representatives, third-party suppliers, and auxiliary staff may invoke the limitations of liability laid down in this article.

10.10 Van Leeuwen does not intend for any provision of these Conditions to exclude or limit liability for harm/loss caused by an intentional act or omission or deliberate recklessness on the part of Van Leeuwen's management. Hence Van Leeuwen shall be liable for intentional and deliberate recklessness but shall only be liable for simple negligence in the case of damage to a person. The liability is limited to the replacement of the damages which are predictable and typically arise.

10.11 The reversal of the burden of proof in accordance with § 924 ABGB and § 1298 ABGB is excluded.

Article 11 - Title and Retention of Title

11.1 All products delivered will remain the property of Van Leeuwen until the moment at which the Customer has met all of its payment obligations in consideration of all of the products delivered pursuant to Agreements concluded with the Customer, as well as all claims due to the failure to perform such Agreements.

11.2 If the Customer fails to render to Van Leeuwen performance of any obligation under this article, or if there is a reasonable, well-founded concern that the Customer will not perform such obligations, Van Leeuwen will be entitled, without any notice of default being required, to repossess the products delivered to own possession, regardless of where they may be located. The associated costs shall be borne by the Customer.

11.3 As long as the aforementioned outstanding claims have not been fulfilled, the Customer will not be entitled to sell the products, to establish a right of pledge or non-possessory pledge on the relevant products, and/or to otherwise encumber the products. In addition, the Customer will be required to keep the products delivered by Van Leeuwen separate from other products, and ensure that they are clearly identified as Van Leeuwen's property, obtain and maintain proper insurance for those products, and refrain from processing or treating the products until the aforementioned claims have been fulfilled.

11.4 Nonetheless in case of reselling (former) property of Van Leeuwen in the ordinary course of business to third parties under consideration of the due diligence of a responsible businessman; the customer, however, does assign in advance to Van Leeuwen all receivables due to him either now or later from the resale or from any other legal transaction with respect to the (former) property of Van Leeuwen when they incur in the amount of the invoice value of any concluded contract between the customer and Van Leeuwen.

Article 12 - Laws and regulations / data privacy

12.1 The Customer guarantees that it will act in compliance with applicable national and international laws and regulations, standards and norms, directives and codes in connection with performing the Agreement, including applicable laws and regulations including those regarding international trade, embargoes, import and export restrictions, and sanction lists, and including all laws and regulations designed to combat and prevent child labour, corruption, slavery, poor working conditions, and terrorism.

12.2 Van Leeuwen handles /processes personal / private data in accordance with the applicable law for the purposes and in the way set out in our Data Protection Notice (Privacy Policy).

Article 13 - Termination / Supply of Collateral

13.1 In addition to its statutory rights, Van Leeuwen will be entitled to terminate any Agreement with a Customer with immediate effect, without judicial intervention being required, and without incurring any liability to pay any form of damages, if the Customer applies for a suspension of payment; if the Customer files for bankruptcy itself or if it is declared bankrupt involuntarily; or if the Customer (being a natural person) dies or (being a legal entity or company) is liquidated or dissolved; or if Van Leeuwen reasonably suspects that the Customer is not complying with, or not fully complying with, applicable laws and regulations, including those relating to international trade, embargoes, import and export restrictions, and sanctions, including financial and other trade restrictions.

13.2 Van Leeuwen is furthermore entitled to demand prepayments or request the Customer to supply collateral as well as withdraw terms of credit granted or rescind the Agreement in writing in case of doubts regarding the Customers solvency, or upon increased credit risk becomes apparent.

Article 14 – Disputes

14.1 All Agreements and juristic and other acts to which these General Terms and Conditions of Sale and Delivery apply are governed by the laws of Austria. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention) is excluded. The application of provisions of any other existing or future international regulations on the sale of movable goods is also excluded to the extent the Parties are permitted to exclude such application.

14.2 All disputes that may arise between the Parties in connection with the Agreements and juristic and other acts to which these General Terms and Conditions of Sale and Delivery apply will be adjudicated exclusively by the Austrian court within whose jurisdiction 2362 Biedermansdorf is located, although Van Leeuwen will always be entitled to submit such a dispute to any court which would have had jurisdiction to adjudicate the dispute in the absence of this provision.

14.3 To the extent these General Terms and Conditions of Sale and Delivery are also drawn up in a language other than German, the German version will always prevail in the event of differences between versions.