

General Terms of Delivery and Sale - VIALIT Asphalt GmbH & Co KG

1. Offer, order, price

- 1.1. The following standard conditions of sale apply to all orders placed with us and remain valid for all subsequent transactions between the parties to the contract without expressly stating these general terms and conditions again.
- 1.2. Any other conditions are binding on us only after we have consented to them in writing. This also applies when Customers refer to their own conditions of purchase. Verbal agreements that imply an additional obligation for us are only binding after they have been confirmed by us in writing.
- 1.3. Orders shall be in writing (Telefax, @mail etc.). Orders are not binding for us unless they have been confirmed by us in writing. An invoice means confirmation.
- 1.4. Our offers and prices are exclusive of VAT, subject to change without notice and ex works (EXW), agreements "carriage paid to..." are understood as CPT(place of destination), all loaded collections by the customer will be carried out FCA plant A-5280 Braunau am Inn (all conditions as per INCOTERMS 2020). Should the costs that are necessary for production of goods and therefore contained in our sales price rise during the delivery period, the stipulated price will increase accordingly to the extent permitted by law.

2. Period allowed for payment, terms of payment, rescission

- 2.1. We have the right to raise partial payment invoices. Our invoices are due and payable net and without deductions 30 days as from the date of invoice. However, the purchase price is due immediately if the Customer is in arrears to us concerning other payment obligations. In the event of a delay in payment, interest on arrears and expenses are charged according to Austrian law with the reservation of claiming additional damage caused by default.
- 2.2. In the event of arrears and failure to meet the deadline, we are entitled to reclaim the delivered goods without rescinding the contract.
- 2.3. If the Customer fails to file a claim against our invoice within 30 days, we shall consider this as the Customer's express consent to it.
- 2.4. We reserve the right to accept bills of exchange, but only on account of payment. Discount charges, tax on drafts and bills of exchange and interest on arrears will be charged to the drawer. We do not undertake liability for due presentation, protest, notification or returning of the bill.
- 2.5. Offsetting or withholding payments due to alleged counterclaims – including those based on warranty claims – are excluded. If the Customer defaults in payment for more than 30 days, execution will be levied against his/her assets. If the Customer's financial situation deteriorates to a considerable extent, we are entitled to back out of all contracts of delivery not yet completed, to retain goods or demand advance payments.
- 2.6. Assignments of claims of customers are prohibited and void without our written confirmation.

3. Delivery

- 3.1. Factually justified and reasonable alterations to our performance and delivery obligations, especially reasonable delays in delivery or partial deliveries, are understood as approved beforehand. Claims for damages or cancellation of the contract due to delayed delivery are excluded in all cases, unless evidence is produced that the delay was caused by gross negligence. In that case 10% of the order value shall fully cover any such claims of the Customer.
- 3.2. During a case of force majeure, the contractual rights and obligations are suspended free of liability. The affected party shall inform the other party of the occurrence, cause of the delay and later of its ending. Severe disruptions to operations, for technical, administrative, or other reasons, which lead to a restriction or cessation of operations and other circumstances, such as the availability of raw materials, which make the fulfillment of obligations significantly more difficult or impossible, are equivalent to force majeure. This also applies if the extraordinary events occur at subcontractors. If the force majeure lasts continuously for a period of at least 6 months, the parties are entitled to withdraw from the contract in writing.

4. Containers

- 4.1. Loaned containers:
Only the loaned containers provided by us shall be sent back to the supply plant / depot empty and in proper condition. If the price is EXW or FCA the costs for returning the containers are charged to the Purchaser. We are entitled to impose a deposit until the return of the containers.
--- The Customer is liable for damaged or lost (parts of) the containers to the extent of the replacement costs new for old. The relevant balance of barrels results from the difference between the number of barrels delivered and the return notes confirmed.
--- Disposal of any residual material left in the barrels will be charged to the Customer.
--- The loaned barrels shall be used exclusively for dispatch of VIALIT goods. Any breach of this stipulation may be prosecuted.
- 4.2. The stipulations concerning loaned containers shall apply accordingly to pallets used in the delivery of palletized goods.
- 4.3. Packaging material:
By accepting the goods, the customer undertakes to dispose of or release the packaging in compliance with national regulations. We only take back packaging material and disposable barrels in accordance with a legal obligation.

5. Passing of risk

- 5.1. The goods are dispatched at the Customer's risk and expense. We package and ship the goods at your risk and expense. The Purchaser shall indemnify us and hold us safe and harmless from any damage arising from dispatch and from any claims made by third parties. We cannot be held liable for damage or loss that occurred during transport. For lack of forwarding specifications provided by the Customer we are obliged to effect forwarding to the best of our judgement. If the Customer does not supply any other specifications concerning insurance against damage in transit, we are entitled to do so at the Customer's cost. However, we in turn are not subject to compulsory insurance.
- 5.2. The Customer is recommended, in his/her own interest, to accept goods damaged on delivery under protest only and to notify the transport agent immediately so as to safeguard any applicable rights.

6. Reservation of title

- 6.1. Regardless of the passing of risk, the goods delivered remain our property up to the point in time when the Customer has fully settled all accounts payable resulting from the contract.
As long as we own the goods, the Customer is not entitled to pledge the delivered goods to third parties or to pledge them as security. If the delivered goods are sold, we must be given the (business) address of the (second) buyer and the Customer shall assign any receivables arising from transactions with third parties to us beforehand to the extent of the purchasing price yet to be paid.
- 6.2. If our property is put at risk by third parties, the Customer shall protect our right of ownership by all appropriate means, notify us without delay and in writing especially of any seizures, confiscations or attachments effected by a court or authority, and assert our property stating our company name and address.

- 6.3. Claiming reservation of title represents a rescission of contract only if this has been expressly declared.

7. Product and processing information

- 7.1. The Customer must observe the product relevant regulations and standards, our instructions and the recognized standards of good practice for the storage, use and processing of our products. Disregard by the Customer is presumed to be the causality for any damage that occurred and that the products were free of defects at the time of delivery, without prejudice to any liability under the title "strict product liability".
- 7.2. Colours, images, dimensions and weights are approximate only, if not otherwise expressly indicated as binding. Alterations or modifications of packaging determined by conditions of production are subject to changes without notice.
- 7.3. Our instructions and material safety data sheets are binding for the processing of our products. Our data, however, serve only as guidelines and Customer must proof these with regard to his specific application and local conditions. Demand figures are approximate values only. Shelf life information does not constitute a guarantee.
- 7.4. Information on storage and shelf life are related to products originally closed and stored under proper, dry and frost-free conditions.
- 7.5. The Customer must carry out preliminary testing under realistic conditions before any application of our product in series.

8. Warranty, compensation for damages, product liability

- 8.1. The Customer shall thoroughly examine the consignment immediately on delivery. Notices of defect because of incomplete consignment or defective goods shall be given in writing and promptly on receipt of each individual consignment, otherwise the consignment will be regarded as accepted without reservation, and any warranty claims or claims for damages and avoidance on account of mistake are waived. The defect must be described in terms of its nature and extent in a way that allows us to clearly identify the reason for notice of defect. The Customer is obliged to provide safe custody for the objectionable goods.
- 8.2. The warranty period is six months for chattels and one year for immovable items from delivery/handover. The customer shall always prove that the defect already existed at the time of delivery. The customer's warranty rights become time-barred two months after the end of the warranty period. To the extent permitted by law, we reserve the right to fulfill a warranty claim at our discretion by repairing, replacing or reducing the price. Costs and expenses that go beyond the specific product warranty will not be reimbursed.
- 8.3. **For emulsion and binder products we accept liability for defects, excluding all other claims, only as follows:** All goods shall be replaced or repaired at our discretion and free of charge, provided they became unfit for use within 2 months of the date of delivery and due to circumstances that verifiably arose prior to the time of passing of risk, and in particular due to a binding agent consistency that does not comply with the applicable version of the binding agent specifications ÖNORM B 3508 – 3509 and 3507. Natural wear, further processing, incorrect or neglectful handling and modifications performed without our approval shall exclude any claims under warranty. Warranty claims can only be accepted if they were submitted to us in writing immediately on finding the defect. The customer shall always prove the defect in accordance with the binding agent regulations by taking standardized samples and examining them in an officially recognized road construction laboratory. If the faulty goods are replaced, the replaced goods become our property.
- 8.4. **We provide compensation for damages only if they are subject to mandatory statutory provisions. In other words: Compensation for damages will particularly only be granted in the event of gross negligence (except for bodily injuries), which is to be proved by the claimant, for the costs of rectifying the loss only, and not for any indirect or subsequent damages. Claims for damages become statute-barred within one year as from knowledge of the damage and damaging party, and in any case within five years of the passing of risk.**
- 8.5. All recourse claims made against us by contractual partners or third parties based on the item Product liability are excluded, unless the party entitled to recourse proves that the fault was caused at least by gross negligence on our side.

9. Acceptance, Purchase on call, Returns

- 9.1. In the event of default of acceptance, we are entitled to store the goods ready for dispatch at the Customer's risk and costs and to invoice the goods as if they were delivered, taking into account all costs accrued. In the event of default of acceptance over a period of more than two weeks, we are at any rate entitled to withdraw from the contract and to demand a lump-sum compensation of 10% as cancellation charge irrespective of any other claims.
- 9.2. Goods bought on call and declared by us as ready for collection shall be purchased within 3 days.
- 9.3. Ordered goods are not taken back. Any goods returned to us are therefore not accepted and sent back at the Customer's risk and costs. In case of returns based on separate agreements the costs of disposal will be charged to the Customer.

10. General, place of performance, jurisdiction, safeguarding clause

- 10.1. The Customer gives his/her approval that personal data relevant to the performance of the contract is saved and processed automatically and may be used from us for the purpose of information and business connection until withdrawal at "office@vialit.at". Changes of business address must be disclosed as long as transactions have not been fully completed by either of the contractual parties, otherwise declarations sent to the address stated last shall be understood as forwarded to addressee.
- 10.2. The place of performance for delivery and payment is the plant at Braunau. The court factually competent for the registered office of our company is the sole place of jurisdiction for all disputes arising directly or indirectly out of this contractual relationship. The contractual relations between the Customer and us are subject to Austrian law, but not subject to UN sales law. However, we reserve the right to base contractual relations on the law that applies in the country of our contractual partner.
- 10.3. Binding consumer rights according to the consumer protection laws are not restricted by the afore mentioned conditions.
- 10.4. When deliveries are made a broad or if the contract is issued in several languages, contract interpretation shall always be based on the Austrian version.
- 10.5. If one or several of the terms and conditions of business contradict applicable law, this will not affect the remaining terms and conditions of the contract.
In that case a condition that serves the stated objective of this condition best of all shall replace the invalid condition.
- 10.6. In the event of a legal (partly) succession of Vialit Asphalt GmbH & Co.KG, the rights and obligations of legal transactions shall be assigned to the given successor.

Version: Aug. 2022

1661 – CPR – 0248 (Kationische Bitumenemulsionen nach EN 13808)
1661 – CPR – 0249 (Fluxbitumen und verschnittene Bitumen nach EN 15322) 0988 – CPR –
1166 (Asphaltmischgut nach EN 13108)

