



VICTREX Europa GmbH - General Terms and Conditions of Sale (Nov 2019 Edition)

The following terms and conditions are incorporated by reference into the Contract (as defined below).

Article 1

General

- 1.1. These General Terms and Conditions of Sale ("**Terms**") shall form an integral part of each contract concluded between Victrex Europa GmbH ("**VICTREX**") and the customer ("**Buyer**") ("**Contract**").
- 1.2. These Terms shall apply also to all subsequent business transactions with the Buyer without any need of express reference thereto or agreement thereon upon the conclusion of such transaction.
- 1.3. Any deviating, opposing or supplementing general terms and conditions of the Buyer shall not become part of the Contract with the Buyer, unless the application of such general terms and conditions has been agreed to explicitly and in writing.
- 1.4. In case of a contradiction between the order form and these Terms, the latter shall prevail.

Article 2

Conclusion of Contract

- 2.1. VICTREX's offers are not binding contract offers. The order for Products submitted by the Buyer shall constitute a binding offer to conclude a Contract for the purchase of the ordered Products. VICTREX may accept Buyer's offer within two weeks upon receipt of the order by issuing a corresponding confirmation ("**Sales Order Acknowledgement**") which shall also contain the anticipated delivery date for that order. Such acceptance by VICTREX may also be declared by delivering the Products to the Buyer.
- 2.2. Orders which the Buyer places by telephone, e-mail or any other remote means shall only be binding if VICTREX has confirmed such orders in writing in a Sales Order Acknowledgement.
- 2.3. The Contract shall be established upon the Buyer's receipt of the Sales Order Acknowledgement and at the terms set out in such Sales Order Acknowledgement even if those terms deviate from the purchase order. This shall not apply if the Buyer notifies VICTREX in writing within two working days from receipt of the Sales Order Acknowledgement that the Sales Order Acknowledgement is incorrect. Such notification by the Buyer shall not be required if the deviations are so serious that VICTREX, in its reasonable discretion, could not consider the deviations from the purchase order to be acceptable to the Buyer.
- 2.4. VICTREX shall be entitled to reasonably change the shape, colour and/or weight of the Products also after the conclusion of the Contract. Samples and documents provided by VICTREX prior to the conclusion of the Contract, such as illustrations, drawings, results of analyses, weight and size specifications are only indicative unless they are expressly agreed to be legally binding. All title and copyright regarding drawings and other documents submitted by VICTREX in the course of the transaction shall remain vested in VICTREX, they shall not be disclosed to any third party.
- 2.5. The Contract is concluded subject to the condition precedent of a correct and timely delivery of the required raw materials and other ingredients to VICTREX by VICTREX's suppliers, except where a non-performance by suppliers was caused by VICTREX's default. VICTREX shall inform the Buyer without undue delay about such non-performance of its suppliers and will refund any prepaid remuneration without undue delay.

Article 3

Delivery and Transfer of Risk

- 3.1. All Products shall be delivered CIP (Incoterms 2010) to the Buyer's named delivery address (or such other Incoterm as may be specified in the Sales Order Acknowledgement).
- 3.2. The Buyer shall accept delivery of the Products at the agreed delivery address at the agreed delivery time or any other earlier time during normal business hours provided that VICTREX has reasonably notified the Buyer of such delivery time. If the Buyer is in default with the above obligation, without prejudice to any other of VICTREX's rights (including to claim damages or rescind the Contract, if applicable) VICTREX shall be entitled to:
 - (i) invoice the Buyer for all costs arising from and in connection with the failed delivery;
 - (ii) to store the Products at the Buyer's risk and cost (including transportation costs) in a warehouse;
 - (iii) claim from the Buyer the difference in price between the price agreed with the Buyer and the resale price to a third party purchaser (if applicable).
- 3.3. The risk of accidental loss of or accidental damage to the Products passes to the Buyer upon the hand-over of the Products to the (first) carrier but at the latest when the Products are handed over to the Buyer or a third party appointed by the Buyer. Any default by the Buyer to accept delivery of the Products shall be deemed as hand-over of the Products to the Buyer.
- 3.4. Partial delivery shall be admissible.
- 3.5. The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Products into the country of destination and for the payment of any duties on them.

Article 4

Delivery Dates

- 4.1. Performance periods and deadlines shall only be binding on VICTREX if they have been expressly confirmed by VICTREX in a Sales Order Acknowledgement.
- 4.2. If VICTREX fails to perform on time, the Buyer shall set VICTREX in writing a reasonable grace period of at least two weeks. If VICTREX fails to meet such deadline the Buyer shall have the right to rescind the relevant Contract.

Article 5

Prices, Invoicing and Payment

- 5.1. The prices are indicated in Euros and are valid as they have been published at the date the Buyer places an order. The statutory VAT will be added to the indicated prices. The Buyer shall also bear all official/statutory charges applicable to the sale and delivery of the Products to the Buyer. Possible changes in custom duties and taxes that occur after conclusion of the Contract shall be borne by the Buyer. If the agreed delivery of the Products takes place more than 30 days after receipt of the Sales Order Acknowledgement by the Buyer the prices published at the delivery date shall apply and deemed agreed.
- 5.2. The Buyer shall effect payment of the purchase price by any of the payment methods set out in the invoice.
- 5.3. Unless agreed otherwise, the following payment terms shall apply:
 - (a) If a specific payment period has been agreed with the Buyer payment shall be made within such period without any deduction. Otherwise, payment must be effected within 15 days without any deductions.



- (b) If the Buyer is in delay with a payment, all outstanding payment claims of VICTREX against the Buyer shall fall due immediately and in full. VICTREX reserves the right to cancel all other Contracts not yet fulfilled at the Buyer's expense or alter agreed payment terms or require advance payment before such other orders are delivered.

5.4. VICTREX shall be entitled to invoice the purchase price for partial deliveries.

5.5. A standard handling fee of 85 Euro's shall apply to all orders where the total quantity of Victrex Products ordered in granular or powder form is less than 100kg per order. (A request for multiple deliveries to the same delivery address upon different dates shall be treated for the purpose of applying the standard handling fee as separate individual orders.)

Article 6

Retention of title

- 6.1 Notwithstanding delivery and the passing of risk in the Products, or any other provision of these Terms the transfer of title in the Products delivered to the Buyer shall occur only upon the full payment of the purchase price, including interest and costs as well as all other sums owed by the Buyer which derive from the business relationship with VICTREX.
- 6.2 The Buyer shall have the right to dispose of the Products delivered by VICTREX only in the ordinary course of its business and only with reservation of title until complete payment of the purchase price to Buyer by its customer.
VICTREX may withdraw the sales authority of the Buyer by written notice if the Buyer is in breach of any obligation under these Terms, in particular if the Buyer is in payment default.
- 6.3 The Buyer's right to process the Products delivered into new goods shall also be subject to the limitations set out in subsection 6.2 above. The processing shall be exclusively for VICTREX's benefit and at no cost to VICTREX. VICTREX shall be deemed to be the manufacturer of the new goods pursuant to § 950 of the German Civil Code and shall obtain title in such new goods.
- 6.4 If the Products in which VICTREX has retained title should be inseparably assembled or mixed with goods that are third party property, then VICTREX shall acquire co-title in the new goods or the mixed stock. The proportion of title shall follow from the proportion of the invoice value of the Products delivered by VICTREX under retention of title and the invoice value of the other goods.
- 6.5 Goods in which VICTREX shall acquire sole or co-title in accordance with subsection 6.3 and 6.4 shall, like the Products delivered under retention of title according to subsection 6.1 above, be treated as goods delivered under retention of title in the meaning of such clauses.
- 6.6 The Buyer hereby assigns to VICTREX in the amount of the invoice total all claims arising from the resale of the Products/goods delivered under retention of title. VICTREX hereby accepts this assignment. The Buyer shall be entitled to collect the claims. VICTREX reserves the right to collect the claims by itself in case the Buyer should be in payment default.
- 6.7 Until such time as the title to the Products passes to the Buyer, the Buyer shall hold the Products as VICTREX's fiduciary agent, and shall keep the Products properly stored, protected and insured at the Buyer's expenses.
- 6.8 If the Buyer is in breach of contract, in particular in payment default, then VICTREX shall have the right to rescind the Contract and shall then be entitled to reclaim all Products delivered under retention of title and the Buyer shall immediately return to VICTREX all Products delivered under retention of title as well as assign to VICTREX any repossession claims against any third party in conjunction with such Products.
- 6.9 If third parties take up steps to pledge or otherwise dispose of the Products delivered under retention of title, the Buyer shall immediately notify VICTREX in order to enable VICTREX to seek a court injunction in accordance with Section 771 of the German Code of Civil Procedure. If the Buyer fails to comply with this obligation he will be held liable for any damages resulting therefrom.

Article 7

Services

- 7.1 The provisions of this Article 7 shall only apply where VICTREX is providing services to the Buyer.
- 7.2 In providing services VICTREX shall:
- (i) provide services with reasonable care and skill;
 - (ii) use reasonable endeavours to meet any performance dates agreed between the parties, but any such dates shall be estimates only and time shall not be of the essence for performance of the services; and
 - (iii) have the right to make any changes to the services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the services.

Article 8

Return Shipments

- 8.1 With the exception of a justified cancellation of the Contract the Buyer shall not be entitled to return any Products to VICTREX without the explicit written consent by VICTREX.

Article 9

Right to set-off and Right of retention

- 9.1 The Buyer shall be entitled to offset only insofar as the Buyer's counterclaim is acknowledged, undisputed or assessed in a legally binding judgment.
- 9.2 The Buyer shall only be entitled to assert a right of retention based on counterclaims arising from the same Contract that are acknowledged, undisputed or assessed in a legally binding judgment.

Article 10

Warranty

- 10.1 VICTREX warrants that the Products comply with the specification set out in the Sales Order Acknowledgement. VICTREX does not warrant that the Products comply with public statements, announcements or advertisements by VICTREX or that they are fit for the purpose intended by the Buyer. VICTREX does not issue separate guarantees for Products specifications.
- 10.2 The Buyer shall examine the Products without delay after delivery, insofar as reasonably feasible in the ordinary course of its business. Any defect identified shall be notified to VICTREX without delay. If the Buyer fails to make such notification the Products shall be deemed accepted, unless the defect was undiscernible upon examination. If a defect that was undiscernible upon examination becomes apparent later, the Buyer shall notify VICTREX without delay upon discovery of the defect; otherwise the Products shall be deemed accepted with regard to such defect. VICTREX may request evidence of the claimed defect (e.g. by the provision of samples or analytical results).



10.3 In case of defects VICTREX will in its sole discretion either repair the defective Products, replace the defective Products with identical goods or with goods of comparable quality or issue a credit note to the Buyer to enable the Buyer to order from VICTREX new Products free of charge. If an attempted remedy has failed for the third time, the Buyer is entitled to either reduce the purchase price or to withdraw from the Contract with respect to the defective Products (or from the entire Contract if being bound to the remainder of the Contract would cause an undue burden for the Buyer). The right to withdraw from the Contract is excluded in case of only minor defects.

10.4 Warranty claims shall be time-barred 12 months after the date of delivery of the Products to the Buyer.

Article 11

Limitation of Liability

11.1 No limitation shall apply to VICTREX's statutory liability for wilful intent, gross negligence, injury to life, limb or health, the breach of guarantees or under the Product Liability Act.

11.2 For slight negligence VICTREX shall only be liable for a breach of essential obligations under the relevant Contract. In this case, VICTREX's liability shall be limited to the lower of (i) the purchase price paid by the Buyer under the relevant Sales Order Acknowledgement and (ii) the damage that could reasonably have been foreseen when the relevant Contract was concluded.

11.3 Subject to subsection 11.1 above VICTREX's liability for lost profits or damages incurred due to late delivery of Products shall be excluded.

11.4 The liability provisions set out in this Article 11 shall apply to all liability claims asserted against VICTREX in relation to any Products or services provided, or any other obligations performed, in relation to a Contract or these Terms, regardless of the legal reasons for such claims (e.g. breach of contract, tort).

Article 12

Export Control

12.1 Buyer acknowledges that the export of Products and any associated technology may be subject to EU export control regulations as may be amended from time to time. Buyer agrees that as a condition of VICTREX's acceptance of any order (i) the Products and any associated technology will not be used for purposes associated with any chemical, biological, nuclear weapons or missiles capable of delivering such weapons, or in support of any terrorist activity and (ii) the Products and any associated technology will not be re-sold if it is known or suspected that they are intended to be used for such purposes, and (iii) the Products and any associated technology will not be sold in breach of EU export control regulations.

12.2 In the event that VICTREX is not able to obtain any requisite governmental licence, consent or permit or other authorisation in fulfilment of any order hereto, VICTREX shall not be liable to the Buyer for such inability to deliver the Products.

Article 13

Use of Trade Marks /IP

13.1 If Products delivered by VICTREX which are combined with VICTREX's trade marks, trade signs or name are processed or converted into new goods the use of the trade marks, trade signs or name in connection with the processed item or new goods shall only be admissible with VICTREX's written consent. This shall apply to all stages of processing.

13.2 The package of the delivered Products may only be re-used for business purposes when VICTREX's trade marks, trade signs and name as well as the identification of Products has been removed.

13.3 The Buyer shall not cause or allow to be analysed and/or reverse engineered any Products, or any samples provided by VICTREX, to determine the chemical composition, formulation or measure the properties of such Products or samples, unless with the prior written consent of VICTREX.

Article 14

Anti-Bribery

14.1 Each party shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption in any jurisdiction relevant to the parties and the supply of the Products and/services ("**Applicable Bribery Law**"). No party shall place the other in breach of the Applicable Bribery Law.

14.2 Each party shall maintain in place throughout the term of this Contract its own adequate policies and procedures to ensure compliance with the Applicable Bribery Law by it and its personnel, and will enforce them where appropriate. Where requested, both parties shall promptly answer reasonable enquiries relating to those policies and procedures.

14.3 The Buyer shall promptly report to VICTREX any request or demand for any undue financial or other advantage of any kind received by the Buyer in connection with the performance of these Terms or a Contract.

Article 15

Confidentiality

15.1 Each party agrees that all information received from the other party under a Contract, including the nature of the Products and/or services to be provided by VICTREX and the existence of any Contract shall be maintained in confidence and not disclosed to others, and the receiving party agrees not to use such information for any purpose other than the fulfilment of a Contract without the prior written consent of the other party.

15.2 Each party shall use no lesser standard of care to protect the confidentiality of information received from the other party than it uses to protect its own confidential information, and shall limit disclosure of such information to those of its group companies, personnel and consultants who have an actual need to know and have a written obligation to protect the confidentiality of such information.

Article 16

Miscellaneous

16.1 The contractual relations between the parties shall be subject to the laws of the Federal Republic of Germany, to the exclusion of its conflict of law provisions and the UN Convention on Contracts for the International Sale of Goods.

16.2 All disputes arising in connection with these Terms or any Contracts concluded hereunder shall be finally settled in accordance with the Arbitration Rules of the German Institution of Arbitration (DIS) without recourse to the ordinary courts of law. The place of arbitration shall be Frankfurt. The number of arbitrators shall be one (1) for disputes with a value of up to EUR 200,000 and three (3) for all other disputes. The language of the arbitration proceedings shall be English. The parties' right to seek injunctive relief in an ordinary court of law shall remain unaffected.

16.3 In order to be legally valid, any amendments or additions to any Contract between the Buyer and VICTREX shall be made in writing. A discharge from this writing requirement by oral agreement shall be invalid.

16.4 VICTREX shall at all times be entitled to transfer a Contract and/or its rights and obligations under such Contract to a third party.

16.5 Should all or part of any provision of these Terms be or become legally invalid, this shall not affect the validity of the remaining provisions. In such an event, the invalid provision shall be deemed replaced by a legally permissible provision which is compatible with the other provisions hereof and which comes as close as



possible to the business intentions of the parties.

16.6 In cases of contradictions between the German and the English version of these Terms the English version shall prevail.

