

General Terms & Conditions Vogel's USA

1. Definitions

1.1 Unless specifically agreed otherwise, these General Terms & conditions apply to tenders, agreements, orders and/or contracts (hereinafter referred to as the "Order" or "Orders") pertaining to sales of products (hereinafter referred to as the "Products") by **Vogel's USA Inc.** (hereinafter referred to as "Vogel's").

2. Validity of the agreement – order of the precedence

2.1 These General Terms constitute the whole agreement between Vogel's and the Buyer relating to carrying out any Order issued by the Buyer and accordingly supersede all prior undertakings, commitments, negotiations, statements, written or verbal communications, acceptances and agreements between Vogel's and Buyer relating to the said Order.

2.2 No stipulation to the contrary stated on any document of the Buyer shall, in any way whatsoever, alter these General Terms, unless Vogel's has expressly agreed thereto in writing.

To the extent that the specific conditions defined in each Order have been approved by Vogel's and the Buyer and, in the case of any contradiction between the General Terms & Conditions and the specific conditions and/or any other applicable document attached or pertaining thereto by reference, the following order of descending priority shall apply:

1. the specific conditions made between Vogel's and the Buyer; and
2. the General Terms & Conditions Vogel's USA; and
3. any other document attached thereto or incorporated therein by reference.

3. Prices, taxes and charges

3.1 Prices are understood to be ex-works and exclusive of taxes. The prices in application are those on the Price List in force on the date of delivery and invoicing. Prices are firm. The Buyer expressly agrees not to request any price revision, regardless of circumstances.

3.2 All duties, taxes, levies and other charges arising because of or in relation to the Order and imposed by the Buyer's country's tax administration shall be at the Buyer's expense and shall be paid directly by the Buyer, or if paid by Vogel's, Vogel's shall be reimbursed promptly by the Buyer on presentation of the documents pertaining thereto certifying that the said payments were made.

4. Delivery – transfer of risk and ownership

4.1 The norm for shipment is Free Carrier (FCA ICC Incoterms 2020), unless expressly agreed otherwise in writing between Vogel's and Buyer. In the event that another Incoterm has been agreed upon Vogel's shall invoice the Buyer for the additional costs involved.

4.2 Delivery lead times are given as an indication only and Vogel's shall not be bound to pay any penalty charge or compensation should delivery take place on a different date. Products travel at the Buyer's risk and liability. It falls to the latter to check them within 5 days of arrival and, where appropriate, to express any reservations to the delivery carriers.

5. Retention of title

5.1 The products shall remain our property after delivery until such time we have received full payment:
a. for the products supplied concerning this specific order, or previous or after orders, and
b. of claims arising from the non-performance by the customer of any orders, such as damages, penalties, interest and costs.

The mere fact that we do not have, or do not have anymore, any claim to the customer at a certain date shall not bar the validity of the continuation of our retention of title if we will have a claim against the customer at a later date.

5.2 If the products are actually in the Buyer's possession before they are paid for, they shall be deemed to have been shipped/transported on a consignment basis and Vogel's shall be entitled at any time to recover these products (entering on to the Buyer's properties for this purpose, if necessary) or demand their return forthwith.

5.3 Prior to the date of acquiring the property of the products, the customer shall not be entitled to dispose of the products or to use the same as collateral for any loan or to pledge the same as security for any debt or mortgage the same or otherwise to transfer or assign the same to any third party. However, the products may be used by the customer in the normal course of its business, provided that the customer informed the third party of the retention of title. In the normal course of business, it is understood that products exclusively may be sold in case the third party pays the purchase price immediately. However, the customer is not allowed to sell the products in the normal course of its business at the moment that the customer files a petition for an official moratorium, is in liquidation or is declared bankrupt.

5.4 The Buyer is obliged to separately and clearly store the products delivered under retention of title and to insure them against damage and theft.

5.5 In case of any amounts due and payable, the Buyer shall enable Vogel's forthwith to regain possession of the products supplied by Vogel's, without any prior notice of default or judicial intervention being required for that purpose. In anticipation of the event that the customer should fail to fulfil any of its obligations (of payment or otherwise) to Vogel's, and without prejudice of any of Vogel's rights, Vogel's is hereby given irrevocable authorization by the Buyer to recover possession of the products forthwith upon Vogel's demand, without any prior notice or judicial intervention being required for that purpose.

5.6 It shall be the Buyer's duty to give Vogel's immediate written notice in the event that third parties (may) enforce any claims upon any of the products which are subject to Vogel's retention of title.

5.7 Every payment Vogel's receives from the Buyer shall be applied first of all towards the discharge of the debts owed to Vogel's by the Buyer in respect of which no reservation of ownership in the terms of Article 5.1 is in force.

5.8 The Buyer will inform Vogel's regarding any additional local requirement applicable in the region where the products he bought from Vogel's are stored, so as to establish and exercise our retention of title. Further, the Buyer will cooperate to fill in, sign and file any additional forms, if necessary to establish and/or exercise Vogel's retention of title.

6. Conditions of acceptance of deliveries by the Buyer

6.1 Unless different features are expressly agreed in writing between Vogel's and Buyer, the features of the Products are those defined in Vogel's technical documentation (hereinafter referred to as the "Specifications").

6.2 Vogel's Products are subject to checks and tests in its factories in accordance with its usual procedures. If the Buyer were to request a specific acceptance procedure for the Products, the corresponding costs shall be at its charge.

6.3 To be admissible and qualify for application of the provisions of this paragraph, all claims regarding compliance of the Products with the Specifications must be lodged in accordance with Vogel's procedures within five working days of the date of delivery.

6.4 No claim shall be admissible once the Products have been modified or have deteriorated because of action or inaction by the Buyer, in particular during storage, inspection, installation, assembly and disassembly.

6.5 So far as the merits of the Buyer's claims are established and acknowledged as such by Vogel's, the latter undertakes to accept the return of the defective Products only, at its cost, subject to the returns being made in their original packaging, intact and in good condition.

6.6 No Product may be returned without Vogel's prior written agreement.

In the event a return is accepted, Vogel's may choose either to replace or repair the Products it has acknowledged as being defective, or to credit the Buyer with the price of the said Products. In no event shall the Buyer be able to rely on such a return to cease making any payment for which it is liable towards Vogel's, nor for cancelling all or part of any Order in progress.

7. Force Majeure

7.1 Neither party shall be held liable for any breach of any order which can be attributed to Force Majeure, notwithstanding article 7.4.

Force Majeure covers all unforeseeable and irresistible events of any nature whatsoever that are outside Vogel's control, such as natural disasters, bad weather, fire, strikes, sabotage, embargo, interruptions, unavailability of products (e.g. raw or subsidiary materials) or services, delays or unavailability in transport (services) or methods of communication, events or acts originating from civil or military public authorities (including all delays in securing any authorizations or permits of any kind whatsoever), declared or undeclared war, which have the effect of rendering the Order temporarily or permanently impossible to carry out.

7.2 If either party is affected by a Force Majeure it shall promptly notify the other party of the nature and extent of the circumstances in question.

7.3 In the event of non-performance or delay attributable to any Force Majeure, the period for the performance of the applicable obligation under the specific order shall be extended for a period equal to the period of delay, with a maximum of two months. Where the obstacle lasts for more than two months, the other party shall be entitled to cancel the order in writing, if we - after written demand hereof from the customer - are unable to deliver within a reasonable time-limit hereafter.

7.4 However, the Buyer is obliged to fulfil its payment obligations in time in respect of orders already completed by us. The party affected by the delay shall nevertheless use its best efforts - with no obligation to spend substantial sums which would not otherwise be required under the conditions of the specific order - to circumvent or overcome the cause of the delay.

8. Warranty

There is a warranty of maximum twenty-four (24) months warranty from the date of purchase. Please visit the warranty page (<https://www.vogels.com/guarantee>) to review the specific warranty terms applicable to Buyer's purchase of the Products.

9. Liability

9.1 To the maximum extent permitted by applicable law, in no event shall Vogel's be liable towards the Buyer, its employees, agents, heirs, assigns and successors in interest for any indirect losses, tangible or intangible damage of any nature whatsoever including, without limitation, all losses, costs, damage, loss of income or profit borne by the Buyer or any third party whomsoever, arising from a defect or a loss of use of the Product or of any of its components or of any property whatsoever, regardless of the reason.

9.2 To the maximum extent permitted by applicable law, Vogel's total cumulative liability for any reason whatsoever, either based on the non-completion of any Order or on any other type of liability (negligence, strict liability or other) or in respect of any warranty whatsoever, shall in no case exceed the amount of the payments received in respect of the said Order.

9.3 If by acting of a party (in the broadest sense) damage occurs, Vogel's cannot be held responsible for any of the damage nor will Vogel's contribute to the costs to recover the damage.

10. Intellectual property rights

The purchasing of Products by the Buyer in no way confers any right whatsoever upon the latter to reproduce all or part of the Products or to exploit any intellectual property rights relating to them. In the event a third party were to bring an action for infringement of its intellectual property rights relating to the Products delivered to the Buyer, Vogel's shall either defend or settle the claim as it shall choose and at its expense.

The above undertaking shall apply only so far as the Buyer shall have informed Vogel's immediately in writing of any claim for infringement involving Products delivered by Vogel's and so long as the latter shall have complete control as regards management of the action and proceedings.

Vogel's liability is expressly excluded if the alleged infringement is the result of the combination or association of the Products delivered with any other product or of any modification of all or part of the Product resulting from any procedure carried out thereon by persons other than Vogel's.

Furthermore, Vogel's shall not be liable for any cost or expenditure incurred without its authorization by the Buyer, or for any direct or indirect losses that might arise from any loss of use whatsoever of the Products delivered. The above provisions form the whole of Vogel's commitments in regard to the Buyer in the event of any dispute arising over third-party intellectual property rights relating to the Products delivered by Vogel's.

11. Confidentiality

11.1. Parties shall not divulge to any third party and not use, except for the purpose of the Order, any information of confidential nature with regard to the other Party or the Products, such as technical information and data, commercial information and know-how, the IP Rights, price structures, costs, administrative and operational information and shall take all steps to effectively ensure the confidential nature of said information.

11.2. The confidentiality obligation under this article shall not apply for data and information:

- a. which is in the public domain, other than by the action of the other Party;
- b. which is released as a result of a statutory obligation or a judicial verdict which has taken effect, in which case the respective Party shall notify this release without delay to the other Party;
- c. with respect to which the Party whose information and data it concerns, has given written discharge from the confidentiality obligation.

12. Compliance

The Buyer acknowledges that he is acquainted with and adheres to Vogel's sustainable development and business ethics requirements, as set out in the Vogel's Code of Conduct, which is available on the Vogel's Partner Portal (available via <https://brandportal.vogels.com>).

13. Governing law

Any disputes between Vogel's and Buyer relating to the existence, validity, interpretation, performance or termination of any Order (or any one of its clauses) which Vogel's and Buyer are unable to resolve amicably within fifty (50) days following receipt of written notice, shall be exclusively decided by the state and federal courts in the State of California. The Order shall be governed by the laws and regulations of the State of California, without regard to conflict of law principles.