

## **General terms and delivery conditions of VIBA BV, dba VIBA Aerospace & Defense**

### **Article 1: Applicability**

1. These conditions apply to all offers of VIBA B.V. (situated in Zoetermeer, the Netherlands, listed in the commercial register of the Chamber of Commerce in The Hague under number 27024569), - hereinafter referred to as: "VIBA" - to the contractual party of VIBA (hereinafter referred to as: "Buyer"), and to all contracts between VIBA and the Buyer (including after termination, cancellation or dissolution thereof). These conditions relate to all products, services and other activities that VIBA will deliver or carry out.
2. VIBA never undertakes to transport goods. In the event that VIBA undertakes to forward goods in the widest sense of the word (including acting as tax representative), in addition to these conditions the latest version of the general conditions of the Netherlands Association for Forwarding and Logistics (FENEX) deposited at the court registries of the Amsterdam, Arnhem, Breda and Rotterdam courts shall also apply.
3. The delivered products will only be assembled and/or installed and/or maintained by VIBA if this has been explicitly agreed in writing between VIBA and the Buyer.
4. VIBA is permitted to have the contract with the Buyer fully and/or partially executed by third parties or third-party employees and/or by using movable and/or immovable third-party products.
5. Stipulations varying from these conditions only apply if and in so far as these have been agreed in writing between VIBA and the Buyer.
6. Applicability of the Buyer's general conditions (to which references may be made in the Buyer's documents) is hereby explicitly rejected.

### **Article 2: Prices and payment**

1. The prices and/or additional variable costs (including shipping, ordering and delivery costs) VIBA charges for products, services and other activities that VIBA will provide or carry out are stated on [www.viba.nl](http://www.viba.nl) and may be amended from time to time. VIBA is only bound by varying prices and/or variable costs in the event that this has been confirmed by VIBA to the Buyer in writing.
2. If, after the formation of the contract with the Buyer, but before the products are delivered and/or services and/or other activities are carried out, any price increasing factors occur, VIBA will be entitled to increase the agreed price, without the Buyer being authorised to dissolve the contract. Price increasing factors include

levies or other charges introduced or increased by government, exchange rate fluctuations, price changes of raw materials and semifinished products, and price changes by suppliers.

3. VIBA's invoices must be paid within 30 days from the invoice date in the manner indicated by VIBA. In case of overdue payment the Buyer is in default without a notice of default being required and from the due date until the date of payment the Buyer must pay contractual interest equal to the statutory commercial interest rate valid at that time as referred to in section 6:119a of the Dutch Civil Code (BW) plus a surcharge of 2%. Any extrajudicial collection costs incurred by VIBA are at the expense of the Buyer. These extrajudicial costs are set at 15% of the amount to be collected with a minimum of 1,000.00 Euros, unless the actual extrajudicial costs incurred by VIBA are higher than 15% of the amount to be collected, in which case the full extrajudicial costs incurred by VIBA must be paid by the Buyer.
4. The Buyer is not permitted to settle an amount payable by VIBA to the Buyer with an amount payable by the Buyer to VIBA.
5. Payments by the Buyer will in the first instance be deducted from any extrajudicial and judicial (collection) costs, interest charges and subsequently from the outstanding invoices payable by the Buyer, whereby the older invoices take precedence over newer invoices, irrespective of any other indications accompanying the payments.

### **Article 3: Products, services and other activities; providing samples**

1. VIBA gives an undertaking to the Buyer to deliver the products according to the description, quality and quantity as further specified in the quotation. Delivery takes place on the basis of the term Ex Works VIBA (in accordance with Incoterms 2010 or most recent issue) unless agreed otherwise in writing.
2. VIBA will execute the agreed services and/or other activities as a reasonably competent and reasonably acting fellow professional and will, to the best of their ability, endeavour to carry out the services and/or other activities with care.
3. Delivery periods stated by VIBA for products, and execution periods for services and/or other activities are only intended as an indication and must never be regarded as definite deadlines.
4. If the Buyer does not take receipt of the products or does not do so in a timely manner, VIBA is entitled to store the products at the expense and risk of the Buyer, or at VIBA's discretion, sell these to a third party.
5. Samples are only indicative and products do not have to conform to the samples.

#### **Article 4: Retention of title, right of pledge and right of retention**

1. VIBA delivers the products to the Buyer on the suspensive condition that the Buyer will fully comply with his obligations towards VIBA that are in place at any time. The retention of title incorporated herein also applies to (I) any new products made with the delivered products, (II) all claims relating to considerations for products, services and/or other activities VIBA delivers or will deliver to or carries or will carry out for the Buyer based on this contract or any other contract of whatever nature, and (III) claims on account of shortcomings in the performance of the contracts referred to in (II), that result in compensation and reimbursement of extrajudicial and judicial costs, contractual and statutory interest, fines and penalties.
2. As long as the suspensive condition as referred to above does not apply, the Buyer has the authority to dispose of the products bought under retention of title, transfer the actual control over these products fully or partially to one or more third parties or perform a juristic act that makes is obligatory to transfer the actual control over these products fully or partially to one or more third parties, provided that:
  - I. this authority is only accorded to the Buyer if and in so far as that is necessary or desirable with regard to the normal operation of his company, and
  - II. this authority is only accorded to the Buyer if and in so far as the Buyer establishes with the third party an equally far-reaching retention of title as this one, although without powers of disposal for that third party, and
  - III. the Buyer is never authorised to encumber the products sold to him under retention of title.The Buyer undertakes to, immediately on VIBA's request, assign to VIBA or - at VIBA's discretion - pledge any claims resulting from disposal of products, sold to him by VIBA under retention of title, to third parties.
3. All products, monies, monetary values, insurance money and/or documents that VIBA holds and/or will obtain on behalf of the Buyer or owes and/or will owe to the Buyer for whatever reason and/or based on whatever instruction shall serve as a possessory pledge for VIBA for any claims VIBA has and/or may have against the Buyer.
4. With regard to any party VIBA shall have a right of retention on all products, monies, monetary values, insurance money and/or documents that VIBA, for whatever reason and/or based on whatever instruction, holds and/or will obtain.
5. In the event of default of payment of the debt by the Buyer VIBA is entitled to a (public) sale of the security or what VIBA holds on the basis of the right of retention in a manner stipulated by law.

## **Article 5: Resale**

1. The Buyer is authorised to put his own trademark on the packaging of the delivered products provided that VIBA's and/or VIBA's supplier's industrial trademark remains visible.
2. The Buyer is authorised to sell the products with due regard to any sanctions (including weapons embargoes, trade restrictions and export restrictions) in force in the Netherlands and in the country from where the products are sold. The Buyer will, in his turn, impose this restriction on to his buyer and will instruct his buyer to ensure that this restriction is imposed on all subsequent commercial buyers.
3. If the Buyer acts in breach of paragraph 1 and/or paragraph 2, the Buyer will owe VIBA compensation to the amount of € 10,000.00 for each transaction that is executed in breach of the provisions in paragraph 1 and/or paragraph 2. Furthermore, the Buyer shall indemnify VIBA against any third-party claims of compensation for damages resulting from, or connected with, the Buyer and/or any subsequent commercial buyers acting in breach of the provisions in paragraph 1 and/or paragraph 2.
4. VIBA is authorised to have an independent accountant carry out an audit on the Buyer's accounts, in order to check compliance with the provisions in paragraph 1 and paragraph 2.

## **Article 6: Defects: time limits for investigation and lodging a complaint**

1. In the case of delivery of products:
  - (a) The Buyer must examine the delivered products within 8 days after delivery - but in any case before the Buyer uses, consumes or resells the products - and report any complaints about visible defects and/or defects noticeable after some investigation to VIBA in writing within this period, failing which any claims of the Buyer on VIBA will lapse. Complaints with regard to defects that are not detected until later during use or consumption by the Buyer, must be reported to VIBA in writing within 14 days after they could reasonably have been detected by the Buyer, but at the latest within 24 months after delivery, failing which any claims of the Buyer on VIBA will lapse. With regard to products with a use-by date, any claim of the Buyer towards VIBA lapses on expiry of the use-by date printed on the products or the packaging.
  - (b) Any claim will lapse, if the delivered products have been sold and/or used and/or processed and/or modified by the Buyer.
2. In the case of services and/or other activities:
  - (a) The Buyer must check the executed services and/or other activities within 14 days after completion and

report any complaints with regard to visible defects and/or defects noticeable after some investigation to VIBA in writing within 5 days after expiry of the time limit for investigation, failing which any claim of the Buyer on VIBA will lapse. Defects that are not detected until later during use or consumption by the Buyer, must be reported to VIBA in writing within 14 days after they could reasonably have been detected by the Buyer, but at the latest within twenty-four months after completion of the services and/or other activities, failing which any claims of the Buyer on VIBA will lapse.

3. In the event of complaints about defects, the Buyer will remain obliged to pay the agreed price in time.

### **Article 7: Warranty provision**

1. VIBA guarantees - with observance of article 6 (Defects: time limits for investigation and lodging a complaint) - that the products to be delivered conform to specifications provided by VIBA in writing, and that the services and other activities satisfy the usual relevant requirements and standards. Barring other written advice to that effect by VIBA, VIBA explicitly does not guarantee, and the Buyer may therefore not expect, that the products to be delivered will possess those properties necessary for a normal or by the Buyer envisaged special use. The Buyer may therefore not derive any rights from oral statements made by VIBA about the possibilities for use of the yet to be delivered products.
2. The warranty is valid during 24 months after delivery of the products or after the execution of services and/or other activities. In the case of products which are subject to a use-by date, the guarantee lapses after expiry of this date. If the Buyer detected the defect after expiry of the warranty period, the Buyer may no longer institute legal proceedings or invoke defences due to the fact that the delivered products, the services or activities performed do not conform to the contract.
3. If a delivered product does not comply with the aforementioned warranty the relevant product - provided that the complaint was lodged in good time on the basis of article 6 - will, at VIBA's discretion, be fully or partially replaced or repaired or reimbursed without any costs being charged to the Buyer. Products that are returned to VIBA for repair and/or replacement and/or reimbursement travel at the risk of the Buyer. If the services and/or other activities performed do not comply with the aforementioned warranty, VIBA will - provided that the complaint was lodged in good time on the basis of article 6 - remedy the defect / the defects covered by the warranty without any costs being charged to the Buyer. These are the only entitlements the Buyer has if the products, services and other activities do not comply with the aforementioned warranties.

4. The warranty does not apply if the defect occurred as a result of (I) any government regulation concerning the nature or the quality of the applied materials, (II) incorrect installation by the Buyer and/or a third party (III) not following VIBA's and/or the manufacturer's instructions for installation and operation, (IV) incorrect, improper and inappropriate use, including use by an incompetent person, (V) bad handling, including handling by an incompetent person (VI) not or incorrectly performing maintenance, (VII) installation, assembly, modifications or repairs carried out by or on behalf of the Buyer without VIBA's permission and/or by an incompetent person, (VIII) using the product or letting the product be used for purposes the product is not intended for.
5. The warranty is only provided to the Buyer and not to any subsequent successors in title.
6. If VIBA used third-party services or activities for the execution of the contract or if VIBA obtained the delivered products from third parties, the warranty is limited to warranties provided by these third parties.
7. VIBA is not held to any warranty if the Buyer has not complied with his obligations.
8. The provisions in paragraphs 2 up to and including 7 in this article also apply in the case of any claims of the Buyer on the basis of breach of contract, non-conformity or whatever other basis.

#### **Article 8: Liability**

1. VIBA's liability is limited to the amount that is paid by VIBA's liability insurance. In the absence of a payment under the liability insurance, VIBA's liability is limited to the net invoice value of the relevant products, services or other activities with a maximum of 100,000.00 Euros per event or series of events caused by the same reason, unless the Buyer proves that the damages occurred by intent or deliberate recklessness by VIBA or any of VIBA's managers. However, VIBA is never liable for:
  - damage caused by intent or deliberate recklessness that is considered equal to that intent by VIBA's employees and/or any auxiliary persons hired by VIBA;
  - indirect damage, including damage caused by a defective product, consequential loss, lost profits, missed savings, damage caused by product recalls, damage by business interruption, loss of clients, and damage to name and/or goodwill;
  - damage to property in the care, custody or control of, but not owned by the insured, including damage to items/products work is performed on or items in the vicinity of the location where work is performed caused by or during the execution of services and/or other activities.

2. The Buyer indemnifies VIBA against all third-party claims due to product liability as a result of a defect in a product the Buyer delivered to a third party and that (partly) consisted of products delivered by VIBA.

#### **Article 9: Force majeure**

1. VIBA shall, under no circumstances, be obliged to fulfil their obligations arising from the contract and shall not be obliged to pay any compensation in the event of force majeure. Force majeure on the part of VIBA includes in any case the following circumstances:
  - A. fire, smoke, explosion, fire-fighting water, theft, natural disasters, industrial action, road blocks, war, danger of war, export and import bans, restrictive measures of any government, industrial accidents and/or operational breakdowns;
  - B. sickness of VIBA's personnel or any auxiliary persons hired by VIBA;
  - C. a general shortage of raw materials and other products and/or services required by VIBA to deliver their products or perform their services or other activities;
  - D. interruption in, or cessation of the production or services by suppliers or other third parties VIBA relies on;
  - E. the Buyer, third parties or persons VIBA is liable for, not or not fully complying with any regulations or instructions from government or VIBA (including those incorporated in these conditions);
  - F. any failure to carry out something that VIBA was not explicitly or separately instructed to do;
  - G. any other circumstances VIBA was not reasonably able to avoid, prevent or block, even if these circumstances were foreseeable at the time the contract was formed. These circumstances also apply in the case of auxiliary persons and include breach of contract by auxiliary persons.
2. In the event of force majeure the Buyer is only entitled to dissolve the contract in so far as the contract cannot be executed or it has been established that the performance cannot be executed for a month.

#### **Article 10: Buyer's indemnification**

The Buyer indemnifies VIBA against third-party claims for damages resulting from, or connected to the products and/or services and/or other activities VIBA delivers or carries out. With regard to his obligation to indemnify the Buyer's obligations towards VIBA include reimbursement of the reasonable costs of defence against third-party claims, unless the damage is the result of intent or deliberate recklessness by VIBA or VIBA's managers.

## **Article 11: Expiry period**

All legal actions and defences by the Buyer and third parties against VIBA will lapse after six months after the agreed warranty period has expired and in the absence of a warranty period after twelve months calculated from the date the products were delivered or the services or other activities were carried out.

## **Article 12: Intellectual and industrial property rights**

1. All intellectual and industrial property rights with regard to delivered products and/or executed services and/or other activities, whether or not the products, services and/or other activities are specifically designed or assembled for the Buyer, rest with VIBA or third-party rightholders and are not transferred to the Buyer on account of the contract with VIBA. The delivery of products or execution of services and/or other activities may not be regarded as an explicit or implicit licence for the use, reproduction or release to third parties of intellectual or industrial property rights, unless VIBA has given explicit written permission for this purpose.
2. The Buyer will warn VIBA immediately if third parties are in breach or are likely to breach VIBA's industrial or intellectual property rights or if third parties are of the opinion that VIBA's products are in breach of their own industrial or intellectual property rights. Should the latter be the case, then VIBA will have the choice to either replace or modify the infringing products, or terminate or dissolve the contract with the Buyer. In these cases the Buyer is not entitled to any compensation from VIBA.

## **Article 13: Applicable law and jurisdiction**

1. All contracts and legal relationships these conditions apply to are governed by Dutch law, with the proviso that:
  - I. the United Nations Convention on Contracts for the International Sale of Goods (CISG/Vienna Sales Convention) does not apply and is explicitly excluded;
  - II. the retention of title incorporated in these conditions, in so far as it is more favourable to VIBA, after import of the relevant products in another country than the Netherlands is, to its fullest extent and in particular in terms of scope, governed by the law of that country.
2. Any disputes which may arise between VIBA and the Buyer will only be submitted for a decision to the court in The Hague, thereby excluding any other court.



#### Article 14: Decisive text and invalidity/nullity of articles

1. The conditions as drawn up in the Dutch language shall be decisive in case of a difference between the Dutch text and the text in any other language.
2. If an article is or becomes invalid and/or is declared null and void, this will not affect the validity of the remaining articles. In the event of an invalid and/or nullified article, a provision is deemed to have been agreed upon, which with regard to what is legally possible approaches the intention and spirit of the invalid and/or nullified article as closely as possible.

For questions concerning our general terms and delivery conditions, please contact undersigned:

#### **Maarten Peters**

Commercial Manager  
M +31 6 55 79 60 40  
T +31 79 330 67 39

#### **VIBA B.V.**

##### **General contact information**

Bleiswijkseweg 41  
2712 PB Zoetermeer  
The Netherlands  
T +31 79 330 67 60  
E [aero@viba.nl](mailto:aero@viba.nl) / [marine@viba.nl](mailto:marine@viba.nl)  
[www.viba.nl/aerospace](http://www.viba.nl/aerospace)