

VESUVIUS – GENERAL TERMS and CONDITIONS OF SALE (Version May 2023)

1. DEFINITIONS

In these terms and conditions, the following words shall have the following meanings:

"Affiliates" means any entity which at any time directly or indirectly controls or is controlled by, or is under common control of Vesuvius or Buyer;

"Buyer" means the corporate entity firm or person referred to in Vesuvius's quotation and/or acceptance of order who purchases the Goods and/or Services from Vesuvius;

"Confidential Information" means any information of a confidential nature concerning the business, affairs, customers, clients or suppliers of Vesuvius and/or its Affiliates, including information relating to its operations, finances, processes, plans, product information, know-how, designs, trade secrets, software and market opportunities;

"Contract" means the contract between Buyer and Vesuvius for the supply of Goods and/or Services in accordance with these terms and conditions;

"Goods" means the goods or products, (including any part or parts of them) to be supplied under or in relation to the Contract;

"Intellectual Property Rights" means patents, copyright trademarks, business names and domain names, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

"Services" means the services to be supplied under or in relation to the Contract.

"Vesuvius" means Vesuvius Europe GmbH, Schieferbank 2-16 – 45472 Mülheim an der Ruhr Germany

2. SCOPE AND APPLICATION OF THESE TERMS AND CONDITIONS

2.1 Any quotation given by Vesuvius shall not constitute an offer and shall not be binding on Vesuvius.

2.2 Any order received by Vesuvius shall constitute an offer by Buyer to purchase Goods and/or Services in accordance with these terms and conditions.

2.3 The order shall only be deemed accepted when Vesuvius issues a written acceptance of the order (including by email) at which point the Contract shall come into existence.

2.4 These terms and conditions apply to the Contract to the exclusion of any other terms that Buyer may seek to impose or incorporate.

2.5 Individually negotiated contract terms shall prevail over the present terms and conditions, provided they have been set out and agreed in writing by Vesuvius (including email).

3. CANCELLATION

3.1 No cancellation of a Contract by Buyer is permitted after acceptance by Vesuvius in accordance with Clause 2.3 above except where expressly agreed by Vesuvius in writing.

4. PRICE

4.1 All prices specified are those ruling at the date of the quotation or if no quotation given, the date of Buyer's order.

4.2 Unless otherwise stated all prices quoted are in the currency of the country where Vesuvius is established, exclusive of VAT, and unless otherwise stated in the Contract the Buyer shall be liable in addition to paying VAT, to pay all applicable duties, sales, taxes and Vesuvius's charges for transport, loading, packaging and insurance.

4.3 Vesuvius reserves the right at any time, by notifying Buyer by writing (including email), to adjust the price to take account of any increase in the cost of raw materials, freight, or any currency fluctuations affecting the cost of the Goods. Once notified by Vesuvius, Buyer shall have five (5) days to advise Vesuvius whether it will accept such price adjustment or terminate the Contract.

5. TERMS OF PAYMENT

5.1 Vesuvius shall invoice Buyer, in respect of Goods, on or at any time after delivery of the Goods, and, in respect of Services, on completion of the Services or relevant part of the Services.

5.2 All sums become due and payable under these terms and conditions within 30 days of the date of invoice issued. Time for payment shall be of the essence.

5.3 Notwithstanding any other provision all payments payable to Vesuvius under the Contract shall become due immediately upon termination of the Contract for whatever reason.

5.4 Vesuvius reserves the right to charge interest at 4% (four percent) per annum above the HSBC PLC Base Lending Rate on all overdue accounts, or the highest rate applicable by law, such interest being deemed to accrue on a day-to-day basis from the due date for payment under Clauses 5.2 and 5.3 until payment of the overdue sum.

5.5 Buyer shall have no right of set off, statutory or otherwise.

5.6 Vesuvius reserves the right to suspend or cancel delivery or suspend performance of any order or any part or instalment without liability until payment or security for payment has been provided to Vesuvius's satisfaction, where, in its opinion, doubts arise (i) as to Buyer's financial position or (ii) in the case of failure to pay for any preliminary work for any Goods and/or Services or any delivery or instalment, or (iii) Buyer refuses to accept delivery of Goods or performance of Services.

6. TERMINATION

6.1 Without prejudice to any rights that have accrued under the Contract or any other rights or remedies, Vesuvius may (notwithstanding any previous agreement or arrangement to the contrary) immediately suspend performance of the Contract, cancel any outstanding delivery of the Goods and/or suspend supply of the Services, stop any Goods in transit or by notice in writing to Buyer terminate the Contract without liability to Vesuvius if Buyer:

6.1.1 fails to pay any sum payable under the Contract; or

6.1.2 is in material breach any of the terms of the Contract and that breach is remediable or (if that breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so; or

6.1.3 becomes insolvent or enters into any arrangements with creditors or takes or suffers any similar action or is under a bankruptcy process; or

6.1.4 and its financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy; or

6.1.5 Buyer is directly or indirectly subject to financial, legal, trade or other sanctions or violates trade or other sanctions laws or is added to the Vesuvius internal sanctions list or is not in compliance with the Vesuvius Anti Bribery and Corruption Policy or Vesuvius has reason to believe that any interaction or doing business with Buyer or delivery to the final buyer may result in a violation of applicable laws (including, but not limited to, violation of sanctions laws), regulations, statutes or rules.

7. DELIVERY AND RISK

7.1 Unless stated otherwise the Goods shall be delivered Ex-Works Vesuvius premises named in the acceptance of order (Incoterms 2020) and Buyer shall collect them within 5 business days of being notified that such Goods are ready for collection.

7.2 Delivery terms are indicative only. Delays in delivery of the order shall not entitle Buyer to (i) refuse to take delivery of the order; or (ii) claim damages; or (iii) terminate the Contract.

7.3 Deviations in quantity of the Goods declared from that stated in the Contract shall not give Buyer any right to reject the Goods or to claim damages and Buyer shall accept and pay at the Contract rate for the quantity of the Goods delivered. Vesuvius shall make its best efforts for delivering the remaining Goods in the best possible timeframe from notification from Buyer.

7.4 If for any reason Buyer does not accept delivery, or otherwise collect any of the Goods when they are ready for delivery, or Vesuvius is unable to deliver the Goods on time because Buyer has not provided appropriate instructions, documents, licences or authorisations then the Goods will be deemed to have been delivered, risk will pass to Buyer (including for loss or damage caused by Vesuvius's negligence) and Vesuvius may:

7.4.1 store the Goods until actual delivery whereupon Buyer will be liable for all related costs and expenses (including without limitation storage and insurance); or

7.4.2 sell the Goods at the best price readily obtainable and (after deduction of all reasonable storage and selling expenses) charge Buyer for any shortfall below the Contract price.

7.5 Upon delivery, Buyer shall examine the Goods and promptly notify Vesuvius of any visible defects or mismatch in quantity or quality within 5 business days, otherwise the Goods will be deemed accepted.

8. RETENTION OF TITLE

8.1 Title to Goods shall not pass to Buyer until Vesuvius receives payment in full (in cash or cleared funds) for (i) the Goods and (ii) all other sums that are due to Vesuvius from Buyer under the Contract, in which case title to these Goods shall pass at the time of payment of all such sums;

Until title to Goods has passed to Buyer, Buyer shall:

8.2.1 store those Goods separately from all other goods held by Buyer so that they remain readily identifiable as Vesuvius' property;

8.2.2 not remove, deface or obscure any identifying mark on or relating to those Goods;

8.2.3 maintain those Goods in satisfactory condition and keep them insured for their full price against all risks; and

8.2.4 give Vesuvius such information as Vesuvius may reasonably require from time to time relating to the Goods and the ongoing financial position of Buyer.

8.3 Any time prior to title in Goods passing to Buyer, Vesuvius may require Buyer to deliver up all the Goods in its possession and if Buyer fails to do so promptly, Vesuvius may retake possession of all or any part of the Goods and Buyer hereby grants Vesuvius an irrevocable right to enter any of Buyer's premises for that purpose (and to authorise others to do so on its behalf).

9. SUPPLY OF SERVICES

9.1 Vesuvius shall use its reasonable endeavours to meet any performance dates for the Services, but any such dates shall be estimates only and time shall not be of the essence for the performance of Services.

9.2 Subject to Clause 13.1, Vesuvius shall not be liable for any kind of loss whatsoever or howsoever arising caused by its failure to provide the Services on the due date.

9.3 Buyer shall provide to Vesuvius in a timely manner all documents, information, items and materials in any form (whether owned by Buyer or a third party) as may be reasonably required by Vesuvius in connection with the Services and ensure that they are accurate and complete in all material respects.

9.4 Where Vesuvius is to perform the Services at Buyer's premises, Buyer shall:

(i) ensure safe and unhindered access to the premises for all employees, agents, consultants or other personnel of Vesuvius, its Affiliates or any of their subcontractors to carry out work at all relevant times, including adequate space to store materials and equipment and, where necessary, access to adequate power, lighting, heating, water, compressed air and steam;

(ii) ensure that all health and safety instructions, consents, permissions, or licences required in order to allow the Services to be provided are in place.

9.5 The Services will be deemed to be completed and the relevant element of the Contract price to be due and payable immediately when Vesuvius issues a written notice to Buyer confirming such completion;

9.6 Vesuvius shall not be liable for late performance of the Services due to:

(i) the lack of relevant assistance from Buyer; or

(ii) the unsuitable condition of Buyer's premises on the site at which the Services are to be provided or any other circumstance beyond the reasonable control of Vesuvius.

10. INTELLECTUAL PROPERTY

- 10.1 All Intellectual Property Rights belonging to a party at the commencement of the Contract shall remain the property of that party.
- 10.2 Subject to Clause 10.1, Buyer acknowledges that all Intellectual Property Rights whether registered or unregistered relating to the Goods and/or Services, and/or the underlying technology and processes for the development, manufacturing, or provision of Goods and/or Services, shall at all times remain the property of Vesuvius and/or, as the case may be, of Vesuvius Affiliates, and that Buyer does not acquire any right, title or interest in such rights by virtue of purchasing Goods and/or Services from Vesuvius. For the avoidance of doubt, Vesuvius shall own any Intellectual Property Rights discovered or created in the process of providing the Goods and/or Services, subject to Clauses 10.1 and 10.3. If and to the extent Buyer has or acquires any such Intellectual Property Rights created in the course of receiving the Goods and/or Services, Buyer hereby assigns and agrees to assign any and all such rights to Vesuvius for no additional consideration.
- 10.3 To the extent required for Buyer to use the Goods and/or Services for its internal business purposes as anticipated by this Contract, Vesuvius grants Buyer a non-exclusive, non-transferable, royalty-free, fully-paid, perpetual, worldwide licence to use Intellectual Property Rights relating to the Goods and/or Services.
- 10.4 Vesuvius may collect data generated in connection with the use of Goods and Services. Buyer acknowledges and agrees that Vesuvius will own all Intellectual Property Rights in such data and may collect, process, analyse and use such data for internal purposes, in particular for further developing and improving Vesuvius Goods and Services.
- 10.5 In the event that Buyer becomes aware that Vesuvius Intellectual Property Rights are or may be infringed, Buyer shall inform Vesuvius without delay and shall assist Vesuvius to take the necessary measures to protect its Intellectual Property Rights.

11. CONFIDENTIALITY AND DATA PROTECTION

- 11.1 Confidential Information shall be kept confidential by Buyer, and shall not be disclosed to any third parties without the prior written agreement of Vesuvius.
- 11.2 Buyer may disclose Confidential Information:
- (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Buyer shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's Confidential Information comply with Clause 11.1-3;
- (ii) as may be specifically required by a final judgment or order by a competent governmental authority, court, tribunal, or regulatory body.
- 11.3 The obligations pursuant to Clauses 11.1-11.2 shall not apply to any Confidential Information which (i) has entered the public domain other than as a result of Buyer's disclosure of information in breach of its confidentiality obligations, (ii) has been lawfully received by Buyer from a third party on an unrestricted basis, (iii) was known to Buyer prior to disclosure by Vesuvius on a non-confidential basis, (iv) was independently developed by Buyer, or (v) the parties agree in writing is not confidential and may be disclosed.
- 11.4 Vesuvius is committed to protecting and respecting data privacy. The Vesuvius Data Privacy Notice is available at www.vesuvius.com or contact the Vesuvius Data Protection Officer at: dataprotection@vesuvius.com.

12. WARRANTY

- 12.1 Vesuvius warrants that the Goods and Services supplied by Vesuvius to Buyer under the Contract shall comply with the Contract specifications for the Warranty Period.
- 12.2 The "Warranty Period" shall be twelve (12) months and commence with the receipt of the Goods or completion of the Services at the agreed place.
- 12.3 ANY OTHER EXPRESS OR IMPLIED WARRANTIES, TERMS, CONDITIONS OR REPRESENTATIONS, INCLUDING IN PARTICULAR ANY WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR PURPOSE, OR WARRANTY REGARDING THE INTERACTION OF THE GOODS WITH EQUIPMENT, SOFTWARE OR SYSTEMS OF THIRD PARTIES, ARE EXPRESSLY EXCLUDED.
- 12.4 In case of proven defective Goods or Services not in accordance with the Contract, Vesuvius shall, at its own discretion, replace or repair such Goods or parts of them or re-perform/complete such Services or parts of them or refund that proportion of the price attributable to such Goods or Services or parts of them.
- 12.5 Vesuvius shall be under no liability under condition 12.1 unless Buyer:
- 12.5.1 notifies Vesuvius in writing of the alleged defects within five (5) business days of the time when Buyer discovers or should have discovered any of them; and
- 12.5.2 affords Vesuvius a reasonable opportunity to inspect the relevant Goods or location at which the Services were performed and, if so requested by Vesuvius and where it is reasonable to do so, promptly returns to Vesuvius or such other person nominated by Vesuvius a sample of the Goods within fourteen (14) days, carriage paid by Buyer, for inspection, examination and testing and otherwise permits Vesuvius to have access to the Goods or such materials at Buyer's premises or other mutually agreed location where they may be or the Services were performed for such purposes.
- 12.6 If Vesuvius elects to replace the Goods or re-perform the Services pursuant to condition 12.4, Vesuvius shall deliver the replacement Goods to or re-perform the Services for Buyer at Vesuvius's own expense at the address to which the defective Goods were delivered or defective Services performed and the legal, equitable and beneficial title to the defective Goods which are being replaced shall (if it has vested in Buyer) re-vest in Vesuvius and Buyer shall make any arrangements as may be necessary to return to Vesuvius the defective Goods which are being replaced or materials relating to the previously performed Services.
- 12.7 Vesuvius shall not be liable for the Goods' or Services' failure to comply with the warranty set out in this Clause 12:
- 12.7.1 for reasonable wear and tear of Goods; or
- 12.7.2 for any defect arising from damage, negligence, abnormal storage or working conditions, failure to follow Vesuvius' instructions (whether oral or in writing), the repair or alteration of Goods without Vesuvius's approval, or improper installation or misuse of Goods; or
- 12.7.3 if the total price due for the Goods or Services has not been paid; or
- 12.7.4 for any Goods or Services supplied in accordance with, or where the defect has arisen due to any drawing, design, specification, instruction, information, or recommendation provided by Buyer; or
- 12.7.5 for any Goods or Services supplied where the defect has arisen because Buyer has failed to provide relevant information; or
- 12.7.6 if Buyer has not used Vesuvius spare parts and/or consumables in or with Vesuvius's Goods; or
- 12.7.7 if Buyer makes any further use of those Goods after giving notice in accordance with Clause 12.5.

13. LIMITATION OF LIABILITY

- 13.1 NOTHING IN THE CONTRACT SHALL LIMIT OR EXCLUDE VESUVIUS'S LIABILITY (I) FOR DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE; OR (II) FOR FRAUD OR FRAUDULENT MISREPRESENTATION; OR (III) FOR ANY BREACH OF ANY IMPLIED TERM THAT VESUVIUS IS ENTITLED TO SELL THE GOODS AND ALLOW BUYER QUIET POSSESSION OF THE GOODS, OR ANY ANALOGOUS LAWS UNDER APPLICABLE LAW; OR (IV) THAT MAY NOT OTHERWISE BE LIMITED OR EXCLUDED UNDER APPLICABLE LAW.
- 13.2 UNLESS OTHERWISE REQUIRED UNDER MANDATORY PROVISIONS OF THE APPLICABLE LAW, VESUVIUS'S TOTAL LIABILITY WITH RESPECT TO ANY GOODS OR SERVICES, WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE) SHALL BE LIMITED TO 100% OF THE TOTAL CHARGES UNDER THE CONTRACT.
- 13.3 VESUVIUS SHALL NOT BE LIABLE FOR (I) LOSS OF PROFITS, (II) LOSS OF OPPORTUNITY, (III) LOSS OF ANTICIPATED SAVINGS, (IV) LOSS OF DATA, (V) REPUTATIONAL HARM, (VI) COSTS OF ANY REGULATORY FINES OR PENALTIES; OR (VII) CONSEQUENTIAL OR INDIRECT LOSSES INCLUDING OF THE TYPE SET OUT AT (I) TO (VI) ABOVE.
- 13.4 IN THIS CLAUSE 13 "TOTAL CHARGES" MEANS ALL SUMS PAID BY BUYER UNDER THE CONTRACT IN RESPECT OF GOODS AND SERVICES ACTUALLY SUPPLIED BY VESUVIUS, WHETHER OR NOT INVOICED TO BUYER.

14. FORCE MAJEURE

- 14.1 Vesuvius shall not be in breach of the Contract or otherwise liable for any failure or delay to deliver the Goods and/or supply the Services or meet its obligations under the Contract, if such failure or delay results from events, circumstances or causes beyond its reasonable control (including without limitation act of God, war, riot, act of terrorism, explosion, abnormal weather conditions, fire, flood, lightning, strikes, lockouts, Government actions; regulations; economic sanctions or trade restrictions, pandemic, epidemic, delay by suppliers, accidents and shortages of materials (including raw materials), labour or manufacturing facilities) ("a Force Majeure Event").
- 14.3 Vesuvius shall give Buyer written notice of a Force Majeure Event as soon as reasonably practicable after discovering it.
- 14.4 If the circumstances preventing delivery are still continuing three (3) months after Buyer receives Vesuvius's notice, then either party may give 30 days' written notice of termination of the Contract to the other.
- 14.5 If the Contract is terminated under 14.4, Vesuvius will refund any payment which Buyer has already made for non-delivered Goods and/or non-performed Services. The terminating party will not be liable to the other party for this termination.

15. INDEMNITY

- 15.1 Buyer indemnifies Vesuvius against all actions, losses, costs (including reasonable legal fees and costs of investigation), injuries, damages, expenses and claims in respect of the Goods and any Vesuvius materials and equipment whilst they are in Buyer's possession except to the extent any of the same relate to death or personal injury resulting from wilful misconduct or gross negligence of Vesuvius or its subcontractors.

16. NOTICES

- 16.1 Any notice to be given hereunder shall be in writing and may be sent by personal delivery or delivered by prepaid next working day letter post or by email when an email address has been indicated in the Contract.

17. ASSIGNMENT

- 17.1 Buyer shall not assign or transfer or purport to assign or transfer the Contract or the benefits thereof to any other person without the prior written consent of Vesuvius. Vesuvius may at any time subcontract, transfer, mortgage, charge or deal with, in any manner, any or all of its rights and obligations under the Contract.

18. GOVERNING LAW & JURISDICTION

- 18.1 Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the ICC Rules, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be Düsseldorf. The language to be used in the arbitral proceedings shall be English. The governing law of the Contract shall be the substantive law of Germany. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.

19. HEALTH AND SAFETY

- 19.1 Buyer agrees to comply with any information relating to the Goods and/or Services and any relevant applicable health and safety regulations whenever supplied by Vesuvius or required by local legislation.

20. GENERAL

- 20.1 Except if the Contract is part of a broader contractual arrangement (e.g. distribution or framework agreement), the Contract sets out the entire agreement and understanding between Buyer and Vesuvius in connection with the sale of the Goods and provision of the Services and shall supersede, replace and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to the sale of Goods/Services. Buyer acknowledges that the Contract has not been entered into wholly or partly in reliance on, nor has Buyer been given, any warranty, statement, promise, or representation by Vesuvius or on its behalf other than as expressly set out in the Contract. Buyer agrees that it shall have no claim for innocent or negligent misrepresentation, or negligent misstatement based on any statement in the Contract.
- 20.2 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, such provision shall be deemed to be severed and deleted; and neither such provision, nor its severance and deletion, shall affect the validity and enforceability of the remaining provisions.
- 20.3 A waiver of any right or remedy under the Contract or by law shall only be effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 20.4 A failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 20.5 No variation of the Contract shall be effective unless it is in writing and signed by both parties (or their authorised representatives).