

International Conditions of Sale for Customers not Resident in Germany

I. Application of the International Conditions of Sale

1. These International Conditions of Sale apply to all customers of Vanguard AG - hereinafter referred to as Vanguard - if the relevant place of business of the customer is **not in Germany**. For customers whose place of business is in Germany, the General Conditions of Sale (Allgemeine Verkaufsbedingungen) of Vanguard apply, which will be forwarded on request. In each case, the relevant place of business is the one which concludes the contract in its own name.
2. These International Conditions of Sale apply to all contracts made with the customer on or after 1 April 2018 whose preponderant object is the **supply of goods** to the customer. Additional obligations assumed by Vanguard do not affect the application of these International Conditions of Sale.
3. **Terms of business of the customer** conflicting with or differing from these International Conditions of Sale or the provisions applicable according to section IX.-2. or IX.-3. do not bind Vanguard, even if Vanguard does not object to them or even if Vanguard unconditionally renders performance or receives the customer's performance.
4. These International Conditions of Sale do not apply, if the customer buys the goods for **personal, family or household use** and if Vanguard knew or should have known that at the time of the formation of the contract.

II. Formation of the Contract

1. The customer is under an obligation to give **written notice to Vanguard prior to the formation of a contract** if
 - the goods to be delivered are to be fit not only for normal use or the customer assumes a particular purpose or his expectations are based on public statements, advertising messages or other circumstances outside the formation of the concrete contract,
 - the goods to be delivered will be used in circumstances which are unusual or which present a particular risk to health, safety or the environment, or which require a more demanding use,
 - there is a risk of atypical damages or unusual amounts of loss, in particular exceeding the limits set up in section VII.-1.-d), of which the customer is or ought to be aware or
 - the goods to be delivered will be used in Germany or will be delivered to customer's clients resident in Germany.
2. **Orders of the customer** are to be put in writing. If the customer's order deviates from the proposal or the tender submitted by Vanguard, the customer will emphasize the differences as such.
3. All orders, in particular also those received by employees of Vanguard, will **take effect exclusively if followed by a written acknowledgement** of the order by Vanguard. The actual delivery of the goods ordered, any other conduct of Vanguard or silence on the part of Vanguard does not allow the customer to assume the formation of the contract. Vanguard can dispatch such written acknowledgement of the order up to and including **fourteen (14) calendar days after** the customer's order has been received by Vanguard. Until this time, the customer's order is irrevocable.

4. The written **acknowledgement of the order** by Vanguard shall be **received in time**, if it is received by the customer within fourteen (14) calendar days after its date of issue. The customer will inform Vanguard without delay in writing, if the written acknowledgement of the order is received with some delay.
5. The written acknowledgement of the order by Vanguard sets out all the **terms of the contract** and brings the **contract into effect** even if - except for the description or the price for the goods to be delivered - the written acknowledgement is not consistent with the declarations of the customer in every respect, especially with reference to the exclusive application of these International Conditions of Sale. The contract will only fail to come into existence if the **customer objects in writing** that the acknowledgement of the order by Vanguard is not completely consistent with the declarations of the customer, the customer specifies the deviations in writing and if the objection is received by Vanguard within a short time, at the latest seven (7) calendar days, after receipt of the written acknowledgement of the order by the customer.
6. **Particular wishes** of the customer, namely particular expectations of the customer regarding the usage or the condition of the goods, guarantees or warranties with reference to the goods or the performance of the contract, as well as performance declarations, instruction manuals or security-related information requested by the customer in electronic or print form, require express written confirmation by Vanguard in every case.
7. Confirmations of the contract produced by the customer are of **no effect** without any objection by Vanguard being necessary. In particular, neither the actual delivery of the goods, any other conduct of Vanguard or silence on the part of Vanguard shall give rise to any belief by the customer in the relevance of his confirmation.
8. Vanguard's **employees**, commercial agents or other sales intermediaries are not authorized to dispense with the requirement of a written acknowledgement of the order by Vanguard or to make promises which differ from its content or guarantees. If and to what extent such persons are authorized to make or receive declarations with effect for or against Vanguard, is to be determined according to German law.
9. **Amendments** to the concluded contract always require written confirmation by Vanguard.

III. Obligations of Vanguard

1. Subject to a failure of delivery on part of his suppliers irrespective of a congruent covering transaction or to an exemption according to section VII.-1. b) Vanguard must **deliver the goods** specified in the written acknowledgement of the order and transfer the property in the goods. Vanguard is **not obliged to perform obligations** not stated in the written acknowledgment of the order by Vanguard or in these International Conditions of Sale, in particular Vanguard is under no obligation if not explicitly agreed upon in writing to give information regarding the goods, to furnish documents or certificates regarding the goods, to deliver accessories or to advise the customer.
2. Vanguard's obligations under the contract made with the customer are owed only to the customer. **Third parties not involved** in the formation of the contract, in particular the customer's clients, are not entitled to request delivery to be made to them or to assert any other claim arising from the customer's contract with Vanguard. The customer's entitlement to take delivery continues to exist even if he **assigns rights to third parties**.

3. Taking account of the **tolerances customary** in trade, Vanguard undertakes to deliver to the customer goods of the agreed kind and quantity which meet the common standards applicable in Germany and ensures that at the time of delivery the goods are free from rights or claims of private third parties which could prevent its use within the European Union. Vanguard is entitled to deliver quantities that are up to 10 per cent inferior or superior to those agreed upon, to make **part deliveries** and to invoice them separately.
4. If further **specification** is required in relation to the goods to be delivered, Vanguard will carry this out having regard to his own interests and to the identifiable and legitimate interests of the customer. A request to the customer to specify the goods, or to participate in the specification, is not required. Vanguard does not undertake to inform the customer of the specification he has made or to give the customer the option of a differing specification.
5. Vanguard undertakes to place the goods packaged, marked and labelled according to German standard **at disposal for collection by the customer FCA (Incoterms 2010)** at the place of delivery indicated in the written acknowledgement of the order or - if a place of delivery is not indicated - at the premises in 12623 Berlin/Germany at the agreed time of delivery. Previous separation or marking of the goods or notification to the customer of the goods being placed at disposal is not required. Under no circumstances, not even when other clauses of the Incoterms are agreed, is Vanguard obliged to inform the customer of the delivery or a failure to take the goods by the person nominated according to section IV.-6., to examine the goods with respect to their conformity with the contract on the occasion of delivery, to check the operational safety of the means of transport and the transportation safe loading or to furnish proof of the delivery being effected. The agreement of other clauses of the Incoterms or of clauses such as "delivery free....." or similar ones merely involve a variation of the provisions as to the transportation and the transportation costs; besides that, the provisions laid down in these International Conditions of Sale remain applicable.
6. The **organization of the transport** and the insurance of the goods beyond the place of delivery decisive according to section III.-5. is none of Vanguard's obligations. If the customer does not give a counter instruction in writing in time, Vanguard is entitled - even without the customer asking for it or without such a commercial practice existing - to contract on terms usual in Germany in the customer's name and at the customer's expense for carriage of the goods at the customer's risk and for insurance of the transport to the destination indicated by the customer and - if such a destination is not indicated - to the place of business of the customer.
7. Compliance with agreed **delivery time periods** or **delivery dates** is subject to the customer's procuring any required documents, releases, permits, approvals, licences or any other authorizations or consents in sufficient time, opening letters of credit and/or making down-payments as agreed and performing all other obligations incumbent upon him properly and in good time and subject to no delay caused by pre-shipment inspections mandated by not German authorities. Moreover, agreed delivery time-periods begin on the date of the written acknowledgement of the order by Vanguard. After informing the customer, Vanguard is entitled to deliver earlier than at the agreed delivery time or to select the date of delivery within the agreed period for delivery.
8. Without prejudice to his continuing legal rights, Vanguard is entitled to fulfil his obligations **after the delivery time periods or delivery dates agreed upon**, if the customer is informed that Vanguard will exceed the delivery time limit and of the time period for late performance. Subject to aforesaid conditions, Vanguard is entitled to make repeated attempts at late performance. The customer can object to late performance within reasonable time, if the late performance is unreasonable. An objection is only effective, if it is received by Vanguard before commencing late

performance. Vanguard will reimburse necessary additional expenditure, proven and incurred by the customer as a result of exceeding the delivery time to the extent that Vanguard is liable for this under the provisions laid down in section VII.

9. **Risks as to price and performance** even in relation to goods which are not clearly identifiable to the contract and without it being necessary for Vanguard to give notice to the customer about the goods being placed at disposal, pass to the customer with delivery pursuant to section III.-5., albeit irrespective thereof with readiness for delivery by Vanguard according to the originally agreed delivery time periods or delivery dates, if these are postponed on customer's request, or as soon as the title to the goods has passed to the customer. The **loading of the goods** is part of the customer's obligations. The agreement of other clauses of the Incoterms or of clauses such as "delivery free....." or similar ones merely involve a variation of the provisions as to the transportation and the transportation costs; besides that, the provisions laid down in these International Conditions of Sale remain applicable.
10. Vanguard is neither obliged to clear the goods for export nor to take care of customs advance declarations. However, Vanguard will apply for necessary export licences and operate **customs formalities** necessary for the export if the customer has requested Vanguard to do so and has furnished Vanguard with the data essential for the export in a written notice attending to this purpose exclusively. If the goods are not cleared for export without any intentional or grossly negligent fault on the part of Vanguard, Vanguard is entitled to avoid the contract in whole or in part without compensation. The agreement of other clauses of the Incoterms or of clauses such as "delivery free....." or similar ones merely involve a variation of the provisions as to the transportation and the transportation costs; besides that, the provisions laid down in these International Conditions of Sale remain applicable.
11. Unless expressly agreed in written form something different, Vanguard is **not obliged** to obtain proves of delivery, **documents**, certificates licences or other authorizations necessary for the export, transit or import, or **security clearance** required for the carriage or otherwise or to render assistance to the customer in obtaining them. The agreement of other clauses of the Incoterms or of clauses such as "delivery free....." or similar ones merely involve a variation of the provisions as to the transportation and the transportation costs; besides that, the provisions laid down in these International Conditions of Sale remain applicable.
12. Vanguard is in no case liable to perform duties associated with the making available of the goods on the market **outside Germany**, to bear levies, duties and charges accruing outside Germany, to comply with weight and measuring systems, packaging, labelling or marking requirements or registration or certification obligations applicable outside Germany or to comply with any other legal provisions applicable to the goods outside Germany. The customer will arrange for translations in any language other than German of instructions, safety information, performance declarations or other written materials about the goods required by law or called for otherwise at his risk and expense.
13. Without prejudice to his continuing legal rights and without a previous notice to the customer being necessary, Vanguard is entitled to **suspend the performance of his obligations** as long as, in the opinion of Vanguard, there are grounds for concern that the customer will wholly or partly fail to fulfil his obligations in accordance with the contract. In particular, the right to suspend arises if the customer insufficiently performs his obligations to enable payment to Vanguard or a third party or pays late or if the limit set by a credit insurer has been exceeded or will be exceeded with the forthcoming delivery. Instead of suspending performance Vanguard is entitled at his own discretion to make future deliveries, even if confirmed, conditional on payment in advance or on opening of a letter of credit confirmed by one of the big German commercial banks. Vanguard is not required to continue with performance of his obligations, if an assurance given by the customer

to avoid the suspension does not provide adequate security or could be challenged pursuant to an applicable law.

14. Except as provided in section III.-8., Vanguard is only obliged to inform the customer of **possible disruption in performance**, once the commencement of the disruption is definitely certain for Vanguard.

IV. Obligations of the Customer

1. Irrespective of continuing obligations of the customer to guarantee or to enable payment, the customer undertakes to pay the **agreed price for the goods** in the currency specified in the written acknowledgement of the order **transferring it** without deduction and free of expenses and costs to one of the financial institutions designated by Vanguard. To the extent that a price for the goods has not been agreed, the price which is at the time of delivery Vanguard's usual selling price for the goods will apply. Vanguard's employees, commercial agents or other sales intermediaries are not authorized to accept payments.
2. The payment to be made by the customer is in any event **due for payment** at the time specified in the invoice. The due time for payment arises without any further pre-condition and, in particular, does not depend on whether the customer has already taken delivery of the goods or the documents or has had an opportunity to examine the goods. The **periods granted for payment** will cease to apply and outstanding accounts will be due for immediate payment, if insolvency proceedings relating to the assets of the customer are applied for, if the customer without providing a justifiable reason does not meet fundamental obligations due towards Vanguard or towards third parties, if the customer has provided inaccurate information regarding his creditworthiness or to the extent that the cover given by a credit insurer for the customer is reduced on grounds for which Vanguard is not responsible.
3. The customer warrants to have the goods transported abroad, not to transfer the right of disposal to third parties as long as the goods are in Germany, and to fulfil all legal requirements and documentations for the handling regarding **customs laws and value added tax** of the delivery or any service according to the applicable provision in Germany. To the extent that Vanguard has to pay German or foreign customs duties or German or foreign value added tax, the customer will indemnify Vanguard in all and every respect without prejudice to any continuing claim by Vanguard. The indemnity is granted by the customer waiving any further requirements or other defences, in particular waiving the defence of limitation or prescription and also includes the reimbursement of the expenses incurred by Vanguard.
4. Regardless of the currency and of the jurisdiction of any arbitral tribunal or court, Vanguard is entitled at his own discretion to **set off** incoming payments against claims existing against the customer by virtue of his own or assigned rights at the time of payment.
5. Any statutory rights of the customer to **set-off** against claims of Vanguard, to **withhold payment** or taking delivery of the goods, to **suspend** the performance of his obligations or to **raise defences or counterclaims** are excluded, except where the corresponding claim of the customer against Vanguard is in the same currency, is founded in the customer's own right and is either due and undisputed or has been finally adjudicated or where despite written warning by the customer Vanguard has committed a fundamental breach of his obligations due and arising out of the same contractual relationship, and has not offered any adequate assurance.
6. The customer undertakes to furnish Vanguard with the data to apply for the **customs formalities** according to section III.-10. in reasonable time ahead and in

writing, **to take delivery** of the goods either by himself or by a person nominated in writing by him to Vanguard at the delivery time without taking any additional period of time and at the place of delivery resulting from section III.-5. and shall fulfil all the duties imposed by the contract, by these International Conditions of Sale, by the rules of the ICC for the use of the agreed clause of the Incoterms® 2010 and by statutory provisions. The customer is only entitled to refuse to take delivery of the goods if he avoids the contract in accordance with the rules in section VI.-1.

7. The customer will not promise or perform any act with regard to the goods purchased from Vanguard, if such **act is forbidden** under the applicable provisions in particular of foreign trade law including the U.S. export control regulations. To the extent that the customer is unsure whether such prohibitions exist, the customer shall seek consultation with Vanguard in writing.
8. The customer will **monitor the goods** purchased from Vanguard **in the market** and will inform Vanguard without delay in writing of any concern that the goods might pose a risk for third parties. Moreover, the customer will, without any demand being necessary, inform Vanguard in writing if Vanguard has to observe any particular duties of reporting or registration or providing information or prior notification or other **requirements for access to market** or has to comply with **obligations to retain documents**, under the provisions in force in the customer's country or in the country where the goods are to be used.
9. Irrespective of any statutory provisions, the customer shall at his own cost take care of or in any other way ensure renewed utilization, material recycling or otherwise prescribed **waste-disposal** of the goods delivered by Vanguard to the customer and of the packaging material.
10. Customers whose place of business is not in the territory of the European Union or the European Economic Area are not permitted to sell the goods to clients with a place of business **outside the country / state of the customers' place of business**; moreover, such customers shall ensure that the goods do not reach or are used in territories outside the country / state of their place of business.
11. The customer is not entitled to imitate the goods or to apply to register or to assert claims in respect of trademarks or name rights or **industrial property rights** for the goods delivered by Vanguard. The customer shall further desist from any challenge to the trademarks or name rights, industrial property rights or the know-how of Vanguard.

V. Delivery of non-conforming Goods or Goods with Defective Title

1. Without prejudice to any exclusion or reduction of liability of the seller provided by law, goods do **not conform with the contract** if the customer proves that, taking into account the terms in section III., at the time the risk passes the packaging, quantity, quality or the description of the goods is significantly different to the specifications laid down in the written acknowledgement of the order, or in the absence of agreed specifications, the goods are not fit for the purpose which is usual in Germany. Regardless of the stipulation established in sentence 1, the goods shall be deemed to conform with the contract to the extent that the legal regulations applicable at the place of business of the customer do not prevent the usual use of the goods.
2. To the extent that the written acknowledgement of the order by Vanguard does not contain an explicit statement to the contrary, Vanguard is in particular **not liable** for the goods being fit for a purpose which is not usual in Germany or for complying with further reaching expectations of the customer or for possessing the qualities of a sample or a model or for their compliance with the legal regulations existing outside Germany, for instance in the customer's country. Vanguard shall also not be

liable for any non-conformity with the contract that did not exist at the time the risk has passed. To the extent that the customer, either himself or through third parties, initiates the removal of non-conformities without the prior consent of Vanguard in writing, Vanguard will be released from his liability.

3. The customer is obliged vis-à-vis Vanguard to **examine or to have examined** every single delivery comprehensively for any discoverable or typical lack of conformity with the contract and moreover as required by law.
4. Without prejudice to any exclusion or reduction of liability of the seller provided by law, goods have a **deficiency in title** if the customer proves that the goods are not free from enforceable rights or claims of private third parties at the time risk passes. Without prejudice to further legal requirements, third parties' rights or claims founded on industrial or other intellectual property constitute a deficiency in title only to the extent that the rights are registered, made public and in legal force in the European Union and prevent the usual use of the goods in the European Union. Regardless of the stipulation established in sentence 1, title to the goods shall be deemed not to be defective to the extent that the legal regulations applicable at the place of business of the customer do not prevent the usual use of the goods.
5. Without prejudice to the statutory obligations of the customer to give notice within reasonable time, the customer is obliged vis-à-vis Vanguard to give notice to Vanguard of any lack of conformity with the contract or any deficiency in title at the latest within one (1) year after taking delivery in accordance with section IV.6. Such **notice** has to be made in writing and directly to Vanguard and to be formulated in such a precise manner as to enable Vanguard to effect remedy measures without need for further inquiries from the customer and to secure claims against Vanguard's suppliers and moreover as required by law. Vanguard's employees, commercial agents or other sales intermediaries are not authorised to accept notices outside Vanguard's premises or to make any statements concerning lack of conformity with the contract or of title and its consequences.
6. Following **due notice** according to section V.-5., the customer can rely on the remedies provided by these International Conditions of Sale. The customer has no other rights or claims whatsoever and no claims of a non-contractual nature due to delivery of non-conforming goods or goods with defective title. In the event of **notice not having been properly given**, the customer may only rely on remedies if Vanguard has intentionally concealed the lack of conformity with the contract or the deficiency in title. Statements by Vanguard as to the lack of conformity with the contract or as to the deficiency in title are for the purpose of explaining the factual position only, but do not entail any waiver by Vanguard of the requirement of proper notice.
7. The customer is **not entitled to remedies** for delivery of non-conforming goods or goods with a deficiency in title, insofar as the customer is liable vis-à-vis third parties for conditions of the goods or their fitness for a use which are not subject of the agreement with Vanguard, or if the customer's claim is based on foreign law.
8. To the extent that the customer in accordance with the terms of these International Conditions of Sale is entitled to remedies because of delivery of non-conforming goods or goods with defective title, he is entitled to demand in accordance with the terms of the UN Sales Convention **delivery of substitute goods or repair** of Vanguard **or to reduce the price for the goods**. The delivery of substitute goods or repair does not lead to a recommencement of the limitation period. The reduction of the price for the goods is limited to the damages suffered by the customer. Further claims for performance are not available to the customer. Irrespective of the customer's remedies, Vanguard is always entitled in accordance with the provision in section III.-8. to repair goods which do not conform with the contract or to supply substitute goods or to avert the customer's remedies by giving him a credit note of an appropriate amount.

9. In case of **unjustified assertion of remedies** for delivery of non-conforming goods or goods with a deficiency in title, although the customer is or ought to have been aware that a non-conformity or a deficiency in title does not exist or that the cause for such non-conformity or deficiency in title claimed are not to be attributed to Vanguard, the customer is obliged to reimburse Vanguard for expenses incurred due to the unjustified assertion of claims.

VI. Avoidance of the Contract

1. The **customer** is entitled to declare the contract avoided, if the respective applicable legal requirements are complied with, after he has threatened Vanguard in reasonable time after the facts justifying the avoidance of the contract had occurred with avoidance of the contract in writing and an additional period of time of reasonable length for performance fixed in writing has expired to no avail. If the customer claims delivery of substitute goods, repair or other performance, he is bound for a reasonable period of time to the chosen remedy, without being able to exercise the right of declaring the contract avoided. In any event, the customer must give notice of avoidance of the contract within reasonable time after the additional period of time has expired in writing and to Vanguard directly.
2. Without prejudice to his continuing legal rights, **Vanguard** is entitled to avoid the contract in whole or in part if the customer objects to the application of these International Conditions of Sale, if the implementation or performance of the contract is prohibited by the law in whole or in part, if on grounds for which Vanguard is not responsible the written acknowledgement of the order by Vanguard is received by the customer more than fourteen (14) calendar days after its date of issue, if insolvency proceedings relating to the assets of the customer are applied for, or if for other reasons Vanguard cannot be expected to fulfil his obligations by means which - taking into consideration his own interests and that of the customer as far as ascertainable and legitimate at the time of formation of the contract - are unreasonable, in particular in relation to the agreed counter-performance.
3. Without prejudice to his continuing legal rights, Vanguard is entitled to avoid the contract in whole or in part after **prior warning** if the customer does not place call off orders as agreed, if he does not furnish Vanguard with the data necessary to apply for customs formalities in due time, if without providing a justifiable reason he does not meet fundamental obligations due towards Vanguard or towards third parties, if he has provided inaccurate information regarding his creditworthiness or to the extent that the cover given by a credit insurer is reduced on grounds for which Vanguard is not responsible.

VII. Damages

1. Without waiving the legal requirements, **Vanguard** is only obliged to **pay damages** due to the breach of obligations resulting from the contract with the customer, the contractual negotiations carried on with the customer or the business relation with the customer in accordance with the following provisions. These provisions apply equally for all of Vanguard's obligations to **reimburse expenses**.
 - a) The customer is required in the first instance to **rely on other remedies** and can only claim damages in the event of a continuing deficiency. The customer cannot claim damages as an alternative to other remedies.
 - b) **Vanguard is not liable** for the conduct of suppliers, subcontractors, carriers or freight-forwarders or for damages to which the customer has contributed. Vanguard is not liable for any loss which occurs as a consequence of the use of the goods beyond the applications released by Vanguard or under conditions of use

other than those set by Vanguard. Vanguard is not liable if the contract cannot be performed as agreed at the time of its formation due to subsequent statutory or sovereign measures. Neither is Vanguard liable for impediments which occur, as a consequence of natural or political events, acts of state, industrial disputes, sabotage, accidents, terrorism, biological, physical or chemical processes or comparable circumstances and which cannot be controlled by Vanguard with reasonable means. Moreover, **Vanguard is only liable** to the extent that the customer proves that the executive bodies or members of staff of Vanguard have deliberately or negligently breached contractual obligations owed to the customer.

c) In the event of liability, Vanguard will compensate within the limits of lit. d) the **losses** of the customer to the extent that the customer proves that he has suffered an unavoidable loss caused by the breach of obligations owed to the customer by Vanguard and **foreseeable** to Vanguard, at the time of the formation of the contract in respect of the occurrence of the loss and its amount. Moreover, the customer is required to **mitigate his loss** as soon as a breach of contract is or ought to be known.

d) Vanguard is **not liable** for loss of profit or damage to reputation. Moreover, the **amount of damages** for late or non-existent delivery is limited to 0.5 per cent for each full week of delay, up to a maximum of 5 per cent, and in case of remedies because of delivery of non-conforming goods and/or goods with a deficiency in title is limited to an amount of 200 per cent of the value of the non-conforming part of the contract. However, this subparagraph does not apply to injury of life, body or health, to intentional concealment of the non-conformity or deficiency in title of the goods and to breaches of contractual obligations due to intentional harm or gross negligence.

e) For breach of contractual, pre-contractual or obligations resulting from the business relation owed to the customer, Vanguard is obliged to pay damages exclusively in accordance with the provisions of these International Conditions of Sale. Any recourse to **concurrent bases of claim**, in particular of a non-contractual nature, is excluded. Equally excluded is any recourse against Vanguard's company organs, employees, servants, members of staff, representatives and/or those employed by Vanguard in the performance of his obligations on grounds of breach of contractual obligations owed by Vanguard.

f) Insofar as the limitation period may not already have barred the claim, claims for damages brought by the customer are excluded after **six (6) months** beginning with the rejection of the claim for damages by Vanguard.

2. Irrespective of continuing statutory or contractual claims, the **customer** is obliged to pay **damages** to Vanguard as follows:

a) In the event of **delay in payment**, the customer will pay the costs of arbitral, judicial and extra-judicial means and proceedings, usual and accruing within the country and abroad, a lump sum of EUR 50,00 as well as (without evidence being necessary) interest at the rate applicable in 12623 Berlin/Germany for unsecured short-term loans in the agreed currency, at least however interest at 9 per-cent points over the base rate of the German Federal Bank (Deutsche Bundesbank).

b) In the case of a **late taking delivery** of the goods by the customer by more than two (2) weeks, Vanguard is entitled to claim damages without evidence being necessary of 5 per cent of the value of the goods to be delivered. In the case of a late taking delivery of the goods by the customer by more than six (6) weeks or an entire failure to take delivery as well as in the event of non-delivery due to a breach of contract by the customer, Vanguard is entitled to claim damages without evidence being necessary of 20 per cent of the value of the goods to be delivered.

c) If the contract has been **avoided by the customer** without justification, Vanguard is entitled, insofar as he consents to the avoidance, to claim damages without evidence being necessary in the amount of 20 per cent of the value of the goods to be delivered.

3. Within the bounds of what is legally possible as well as within what is usual in the trade, the **customer** is in his commercial relationships with his clients obliged to **limit his liability** both in principle and in amount.

VIII. Other Provisions

1. **Title of the goods** that have been delivered **remains with Vanguard** until settlement of all claims existing against the customer. The allocation of risk as to price and performance in section III.-9. is not affected by the reservation of title.
2. Irrespective of continuing statutory or contractual claims, the customer will indemnify Vanguard without limit against all claims of third parties which are brought against Vanguard on the grounds of **product liability** or similar provisions, to the extent that the liability is based on circumstances which - such as, for example, the presentation of the product - were caused by the customer or other third parties without express written consent of Vanguard. In particular, the indemnity also includes the reimbursement for expenses incurred by Vanguard and is granted by the customer waiving further conditions or other objections, in particular without requiring compliance with control and recall obligations, and waiving any defence of limitation.
3. In relation to pictures, drawings, calculations and other **documents** and computer-software, which have been made available by Vanguard in a material or electronic form, the latter reserves all proprietary rights, copyrights, other industrial property rights as well as know-how rights.
4. Subject to written objection by the customer, **personal data**, which Vanguard receives from the customer in the execution of activities covered by these International Conditions of Sale, are processed by Vanguard and also by service providers located in Germany or abroad.
5. The transmission of **electronic documents (EDI)** requires special agreements.
6. All communications, declarations, notices etc. are to be drawn up exclusively in **German or English**. Communications by means of fax or e-mail fulfil the requirement of being **in writing**.

IX. General Basis of Contracts

1. The **place of delivery** results from section III.-5. of these International Conditions of Sale and applies likewise to the delivery of substitute goods or the repair of delivered goods. The **place of payment and performance** for all remaining obligations arising from the legal relationship between Vanguard and the customer is 12623 Berlin/Germany. These provisions also apply if Vanguard assumes the costs of money remittance, renders performance for the customer somewhere else or payment is to be made in exchange of documents or goods or in the case of restitution of performances already rendered. Vanguard is also entitled to require payment at the place of business of the customer. The agreement of other clauses of the Incoterms or of clauses such as "delivery free....." or similar ones merely involve a variation of the provisions as to the transportation and the transportation costs; besides that, the provisions laid down in these International Conditions of Sale remain applicable.

2. The United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods (**UN Sales Convention / CISG**) in the English version governs the legal relationship with the customer. The UN Sales Convention applies, above and beyond its own area of application, and regardless of reservations adopted by other states, to all contracts to which these International Conditions of Sale are to be applied according to the provisions of section I.
3. The **formation of contract**, including agreements as to the jurisdiction of courts and arbitrators, its amendments or alterations, and the contractual **rights and obligations of the parties**, also including the liability for death or personal injury caused by the goods to any person and breach of pre-contractual and collateral obligations, as well as the interpretation are exclusively governed by the UN Sales Convention together with these International Conditions of Sale. Where standard terms of business are used, in case of doubt the Incoterms® 2010 of the International Chamber of Commerce apply taking into account the provisions stipulated in these International Conditions of Sale. Subject to differing provisions in these International Conditions of Sale, the rest of the legal relationship between the parties is governed by the Swiss Code of Obligations.
4. All contractual and extra-contractual disputes as well as disputes under insolvency law, arising out of or in connection with contracts to which these International Conditions of Sale apply, including their validity, invalidity, breach or cancellation as well as other disputes arising out of the business relationship with the customer shall be finally resolved, without recourse to the ordinary courts of law, by arbitration according to the Swiss Rules of International **Arbitration** (Swiss Rules) in force on the date when the Notice of Arbitration is received in accordance with these Rules. The tribunal shall consist of three (3) arbitrators, one (1) of them shall be nominated by the claimant, one (1) of them by the respondent and the chairman of the tribunal shall be designated by the two arbitrators so nominated, or if the amount in dispute is inferior to € 250.000, there shall be one (1) arbitrator appointed according to the Swiss Rules of International Arbitration. The place of the arbitration shall be Zurich/Switzerland, the languages used in the arbitral proceedings shall be German and/or English. The competence of the Arbitral Tribunal excludes especially every statutory competence of state courts, which is provided by reason of a personal or substantive relation. If this arbitration clause is ineffective or ceases to be effective, the non-exclusive jurisdiction of the courts which have jurisdiction for 12623 Berlin/Germany is agreed for all disputes instead. If the relevant place of business of the customer is within the European Economic Area (EWR) or Switzerland, irrespective of any ineffectiveness of the arbitration clause and instead of bringing an action before the arbitral tribunal, Vanguard is also entitled to bring an action before the State Court which has jurisdiction for 12623 Berlin/Germany or the State Court of the customer's place of business.
5. If provisions of these International Conditions of Sale should be or become partly or wholly ineffective, the remaining arrangements will continue to apply. The parties are bound to replace the ineffective provision with a legally valid provision, as close as possible to the commercial meaning and purpose of the ineffective provision.