



# VESUVIUS

## 1 • GENERAL

The purpose of these Terms and Conditions of Sale is to set out the terms and conditions of sale of products by VESUVIUS to buyers. VESUVIUS may change them at any time, on the understanding that the applicable Terms and Conditions of Sale shall be those in force on the day of the Customer's quotation request. The fact that VESUVIUS chooses not to exercise these Terms and Conditions of Sale at any given time shall not be construed as amounting to a waiver of them in the future. The Terms and Conditions of Sale shall form the basis of commercial negotiations to the exclusion of any other terms and conditions. Exceptions to these Terms and Conditions will only be made by an express written agreement between the parties.

## 2 • OFFER FOR SALE

The Customer shall send VESUVIUS a written request for a sale quotation using the medium of its choice.

VESUVIUS shall send the Customer an offer for sale including the terms and conditions thereof. Under no circumstances shall this offer constitute acceptance of the terms and conditions which might be set out in the quotation request or in any other document originating from the Customer, unless these are incorporated within the Offer.

In the event of acceptance by the Customer, the Contract will be considered binding and final. The Contract will form the entirety of the Contract concluded between VESUVIUS and the Customer and will prevail over all previous communications between the parties, whether verbal or written. This Contract may only be modified if a written document is signed to this effect by a duly authorised representative of VESUVIUS.

The Customer may only cancel the Contract with the written agreement of VESUVIUS and on payment of reasonable expenses to cover the costs incurred by VESUVIUS prior to cancellation. In addition, VESUVIUS will be entitled to retain any payment on account and/or sum paid by the Customer prior to cancellation.

## 3 • PRICE

The Products shall be invoiced at the price, always quoted exclusive of VAT, agreed at the time of the order and, unless stated otherwise, unpaid. The price of the Products listed in the Offer shall be valid for a period of thirty (30) days from the date on which the Offer was issued. After this period the offer shall lapse. Any change in the price as a result of changes in the legislation or regulations (duties, taxes, charges, etc...) shall be passed on immediately in the invoice, if it arises between the day of the order and the day on which the Products are dispatched to the Buyer.

## 4 • PAYMENTS

Payments will be made within thirty (30) days of the date on which the invoice is issued, unless otherwise stated by VESUVIUS in writing. VESUVIUS reserves the right to set the buyer an upper limit for outstanding amounts and to make the supply of Products conditional on submission of a guarantee, taking into account any payment period allowed.

In the event of total or partial non-payment by the Customer on the due date, VESUVIUS will have the option of:

- suspending any delivery, and/or
- cancelling the sale, the Customer being deemed to be in default, after serving formal notice by simple letter at the end of the due date which has had no effect within 8 days from the date on which it was sent, and immediately reclaiming the Products in accordance with the retention of title clause referred to in article 5 of these terms and conditions;
- demanding payment in cash for any order in progress and turning away any new orders;
- declaring accelerated performance of all outstanding receivables;
- retaining payments on account and other sums paid by the Customer, even where the Products are returned.

Furthermore, without prejudice to remedies under the general law for any other loss resulting from the delay, any delay in payment will automatically result in:

## TERMS AND CONDITIONS OF SALE

- payment of late-payment penalties calculated at the rate of 1.3 % per month, without prior formal notice;
- invoicing of a fixed rate of compensation in respect of recovery costs in the sum of 40 euros.

In the event that the recovery costs incurred exceed the amount of this fixed rate of compensation, VESUVIUS may claim additional compensation on providing justification.

## 5 • RETENTION OF TITLE

**Products shall remain the property of VESUVIUS until actual payment in full of the principal amount, expenses and incidentals by the Customer, notwithstanding the fact that the risks in and care of the Products shall be transferred to the Customer at the time of delivery of the Products in accordance with the Incoterms® set out in the Contract. Presentation of bills or of any other document creating an obligation to pay shall not constitute payment in accordance with this paragraph.**

**Failure to make any one of the payments or pay any one of the sums due to VESUVIUS within the specified periods may result in some or all of the Products being reclaimed up to the amount of the sums which are owed to VESUVIUS, whether they are due or have yet to be incurred. Where the Products are returned, payments on account and other sums paid by the Customer will remain definitively the property of VESUVIUS.**

**The Customer undertakes not to sell the Products which remain the property of VESUVIUS by virtue of this clause.**

**The Customer will ensure that it is always possible to identify the Products.**

**The Customer must arrange insurance of the Products against the risks of loss, deterioration, destruction, and theft, etc., and must advise VESUVIUS of any measures taken by third parties in respect of these Products, particularly in the case of seizure.**

## 6 • DELIVERY

Delivery of the Products shall be carried out in accordance with the Incoterms® rule agreed between the parties within the Contract.

The Customer may not delay delivery without the prior agreement of VESUVIUS.

It shall be the responsibility of the Customer to check on receipt of the Products :

- that the quality and quantity of the Products exactly match the delivery note.
- the apparent condition of the Products delivered and their packaging.

In the event of damage, lack of conformity, apparent defect or missing products, the Customer must express any specific reservations, setting out reasons, which must be stated on the delivery note, dated and signed. Signature of the delivery note without reservations shall amount to acceptance of the delivery and acknowledgement that the delivery is in order.

The Customer must confirm his reservations, giving reasons, by registered letter with a request for advice of delivery to VESUVIUS within a period of 3 days from the date of delivery, excluding public holidays. No complaint can be validly accepted where the Customer fails to comply with these formalities. Where the Products have serious defects attributable to VESUVIUS, the latter will only be obliged to either replace the Products or to reimburse the price of the Products which have been returned and acknowledged to be defective, as it sees fit.

## 7 • WARRANTIES

VESUVIUS warrants the proper manufacture of and the quality of the materials used in the Products at the place and time of delivery. The Products must correspond to the agreed specifications. However, the performance levels given by VESUVIUS are provided solely for guidance. VESUVIUS does not warrant that the Products are necessarily suitable for the use envisaged by the Customer, and VESUVIUS will not be held liable under any circumstances for deviations from the levels indicated.

In the event of a latent defect in a Product, the Customer must submit a claim in writing by registered letter with a request for advice of delivery.

The Customer must allow VESUVIUS, or any third party

authorised by it to examine the Products at the Customer's warehouses. The Customer may not return the Products to VESUVIUS unless it has received a prior written agreement for this purpose from VESUVIUS.

If after inspection VESUVIUS reaches the conclusion that the Products are defective, VESUVIUS will replace them and they may not give rise to any reimbursement or compensation whatsoever, apart from shipping costs.

**THIS WARRANTY SHALL REPLACE ALL OTHER EXPRESS, IMPLIED AND STATUTORY WARRANTIES, AND SHALL BE STRICTLY LIMITED TO THE STIPULATED TERMS AND CONDITIONS.**

## 8 • LIABILITY

Under no circumstances will VESUVIUS be liable for direct or indirect loss which might be caused to the Customer, whatever the cause, and particularly as a result of the Products sold, except as expressly provided for under these Terms and Conditions of Sale.

In this respect, the Customer expressly acknowledges and admits that VESUVIUS will not be liable to the Customer under any circumstances, whatever the cause, for any direct or indirect financial, incidental or unforeseeable losses of any nature whatsoever, including, but not limited to, losses of anticipated profits and any other losses which might result from the poor condition or functional failure of the Products.

## 9 • FORCE MAJEURE

VESUVIUS may not be held liable under any circumstances in the event of force majeure. The parties agree to include all facts and circumstances of any nature whatsoever which are beyond the direct and immediate control of VESUVIUS.

By express agreement, in addition to those typically upheld by French case-law, the following cases in particular shall be deemed to be force majeure: natural disasters, wars and riots, interventions by government authorities and by their agents (including - but not limited to - interventions by environmental protection officers), embargos, acts of vandalism, sabotage, strikes, lock-outs and, shortages of and delays in delivering energy or fuel and raw materials or spare parts and lack of means of transport. In such circumstances VESUVIUS will advise the Customer in writing, specifically by fax or email, within 24 hours of the date on which the event occurred; the Contract binding VESUVIUS and the Customer then being suspended automatically without compensation from the date on which the event occurred.

Should the event last for more than 12 months, the Contract concluded may be terminated by the first party to take action without either of the parties being able to claim the award of damages. Such termination will take effect on the date on which the registered letter with request for advice of delivery terminating the said Contract is first presented.

## 10 • APPLICABLE LAW / COMPETENT JURISDICTION

**These Terms and Conditions of Sale and sales resulting from them shall be subject to French law, to the exclusion of the rules of the CISG.**

**Any disputes or disagreements arising in relation to Contracts concluded in application of these Terms and Conditions of Sale, or arising when commercial relations between the parties are terminated, will fall under the exclusive jurisdiction of the commercial court within whose area of jurisdiction VESUVIUS has its registered office, even where there is more than one defendant or where there are incidental claims or where third parties are introduced.**

Terms and Conditions of Sale updated on 04/12/2013