

## 1. Conclusion of contract

(1) The following terms and conditions for purchase orders (Terms and Conditions) shall govern any and all requests and orders placed by VACUUMSCHMELZE GmbH & Co. KG (VAC) for its required supplies or services. They shall also govern any and all future supplies or services provided to VAC even where no express reference is made thereto again upon concluding the contract.

(2) These Terms and Conditions shall govern exclusively. VAC does not acknowledge any conflicting terms and conditions of the Supplier except to the extent that it has expressly consented thereto in writing. Acceptance of or rendering payment for supplies or services of the Supplier shall not constitute consent.

(3) The Supplier shall confirm in writing any purchase order placed by VAC (Purchase Order Confirmation). If written confirmation is not effected within two weeks of receipt of order, VAC may revoke its purchase order. Calls for delivery pursuant to an order and call-off delivery schedule shall be binding unless the Supplier objects thereto within two business days of receipt.

(4) If the Purchase Order Confirmation deviates from the actual purchase order, VAC shall be bound thereto only if it consented to the deviation in writing.

(5) Oral agreements, including modifications or supplements to the purchase order shall be valid only if confirmed in writing by VAC.

## 2. Dates and time periods for performance

(1) Scheduled dates and time periods shall be binding. Controlling for the timeliness of deliveries shall be the date of receipt at VAC's designated recipient (regardless of the Incoterms agreed), controlling for the timeliness of deliveries involving set up or assembly and for the timeliness of services shall be the date on which they are available for acceptance.

(2) Should a delay in any deliveries or services become evident, VAC shall be notified promptly along with the reason for and the expected duration of the delay.

(3) In the event of default with respect to deliveries or services, VAC may require payment of a contractual penalty (*Vertragsstrafe*) equivalent to 0.5% of the value of the delivery or service for each completed week, however not more than 5 %. VAC may assert a claim to payment of a contractual penalty in addition to its claim for performance; VAC shall notify the Supplier that it is reserving its right to assert a claim for payment of a contractual penalty within 10 business days, calculated from the date of acceptance of the delayed delivery or service. Any and all further rights and claims are hereby reserved.

(4) Supplies or services may be delivered or performed prior to the scheduled date only subject to VAC's express consent. In those cases where supplies or services are delivered or performed prior to the scheduled date, the payment period shall not begin to run until the date on which the delivery was originally scheduled.

(5) The Purchaser shall be notified of over-deliveries before they are ready for delivery. The Purchaser's consent must be obtained prior to shipping any quantities in excess of the quantity ordered.

(6) Partial deliveries or services are not permitted unless VAC has consented thereto.

## 3. Shipping

(1) The Supplier shall bear the shipping and packaging costs. For pricing *ex-works* (Incoterms 2000), the lowest cost shipping method shall be used if VAC has not stipulated a specific shipping method. Furthermore, air freight transport shall require VAC's express written consent. Any additional costs arising due to the failure to comply with any shipping instructions shall be borne by the Supplier. Any additional costs arising from the necessary use of express shipping in order to meet scheduled delivery dates shall be borne by the Supplier.

(2) All deliveries shall include the packing slips or shipping orders along with an indication of the content as well as the full purchase order number. Notice of shipment including this information shall be sent promptly.

## 4. Invoices

Invoices shall contain the purchase order number as well as the numbers of each individual item. Invoices are not payable as long as this information is lacking. Invoice copies are to be designated as duplicates.

## 5. Payment

(1) Payments are to be remitted less a 3% discount within 14 days or in full within 30 days.

(2) The payment period shall begin to run upon full performance of the delivery or service and receipt of a duly issued invoice. To the extent the Supplier is required to provide material tests, test reports, quality documents or other documentation, the delivery or service will not be deemed complete unless such documentation is also received. The discount may also be deducted if VAC effects set-off, makes partial payments or withholds a reasonable portion of payment due to defects. The payment period shall begin to run once any such defects have been remedied in full.

(3) Payment by VAC (dispatch of cheque, transfer of funds) shall operate to preserve the payment and discount period.

(4) Acceptance of the delivery or service or payment without reservation shall not constitute any waiver of any claims to which VAC is entitled nor does it constitute any acknowledgment of the delivery or service being conforming to contract.

## 6. Assignment of claims

Claims of the Supplier against VAC may be assigned only subject to VAC's written consent. The foregoing shall not affect § 354a German Commercial Code (*Handelsgesetzbuch*).

## 7. Claims for defects

(1) The Supplier warrants that supplies and services are free of defects. Specifically, these must reflect the state of the art, the generally recognised technical safety regulations and relevant laws.

(2) Acceptance is subject to an inspection of the supplies and services to ensure that they are free of any defects, specifically that they are also correct and complete; said inspection is to be conducted to the extent and as soon as reasonably expedient in the due course of business. The Purchaser shall give notice of any defects promptly following discovery thereof. In this respect, the Supplier waives the objection of failure to give timely notice of defects.

(3) Claims for defects - on any legal grounds whatsoever – shall become time-barred 36 months after risk passes, i.e., in the case of supplies, following delivery and in the case of services for work (*Werkleistungen*), upon final acceptance. If the Supplier satisfies its obligation to cure performance by effecting substitute delivery, the limitation period for the substitute delivery shall begin to run from the time risk passes, unless upon curing the Supplier expressly and correctly reserved the right to effect substitute delivery based solely on goodwill, in order to avoid disputes, or in the interest of continuing the supply relationship. The foregoing shall not affect any longer statutory limitation periods.

(4) The Purchaser may select the form of cure (remedy of defect or defect-free delivery/performance of the contractual supplies /services). The Supplier may not refuse the form of cure selected by VAC unless it would require unreasonable cost.

(5) After a reasonable period for cure has expired without result, VAC may carry out the necessary measures itself or have these carried out by a third party at the Supplier's expense and request reimbursement of the required expenses. No time period need be set if this is no longer possible for reasons of particular urgency, specifically in order to ward off imminent danger or prevent greater damage.

(6) In the case of defects in title, the Supplier shall indemnify VAC against any third-party claims, unless the Supplier is not at fault for said defects in title.

(7) Any further or supplemental statutory claims of VAC shall remain unaffected hereby.

#### **8. Sub-suppliers**

Purchasing the contractual supplies from third parties or engaging third parties to perform the contractual services, either in whole or in part, is not permitted without VAC's written consent.

#### **9. Material provided**

(1) To the extent not otherwise agreed by the parties, any material provided by VAC shall remain the property of VAC and shall be stored separately free of charge, labelled and held with the due care of a prudent businessman. Such materials may only be used for supplies or services provided to VAC. In the event of loss or damage, the Supplier shall pay compensation.

(2) Materials are processed or altered on behalf of VAC, who is deemed the producer and owner of the new or altered object. If legal reasons do not permit this, VAC and the Supplier agree that VAC shall become a co-owner of the object produced using VAC's material in a ratio of the value of the materials provided to the value of the product as a whole, which in this respect is being held by the Supplier on VAC's behalf. The Supplier shall hold the new object free of charge on VAC's behalf with the due care of a prudent businessman.

#### **10. Know-how and confidentiality**

(1) Tools, moulds, samples, models, profiles, drawings, standards, mechanicals and templates provided by VAC, as well as objects produced based thereon, may not be disclosed to third parties nor used for any purpose other than the contractual purpose without VAC's prior written consent. They are to be secured against unauthorised access or use. Notwithstanding further rights, VAC may require surrender thereof if the Supplier is in breach of these obligations.

(2) The Supplier shall not disclose to third parties any confidential information obtained from VAC to the extent it did not generally or otherwise have lawful knowledge thereof.

(3) Any proprietary rights of VAC shall remain unaffected.

#### **11. Property of VAC**

Items which are in the Supplier's possession as the property of VAC – e.g., for repair – may only be surrendered in those cases where an agent of VAC is sent to personally pick up the objects and then only upon submission of a copy of the order transaction. The Supplier is required to have the agent of VAC show its company I.D.

#### **12. Right to refuse performance and right of retention**

The Supplier may only assert a right of retention with respect to counterclaims directly arising under this Agreement. The Supplier may only assert a right of retention or a right to refuse performance based on claims which are uncontested or have been held to be final and absolute by a court of law.

#### **13. Miscellaneous**

The Supplier agrees

- to observe the relevant regulations for the prevention of accidents, other occupational health and safety regulations, and recognised rules of safety and occupational medicine – safeguards required under § 2 (1) of the Regulations for the prevention of accidents of the employer's liability insurance association for precision and electrical engineering (*Berufsgenossenschaft der Feinmechanik und Elektrotechnik*) shall be provided free of charge;
- to comply with all relevant environmental laws, and apply procedures which are as environmentally friendly as possible based on the current state of the art;
- to apply any labels required under the German Hazardous Substances Regulation (*Gefahrstoffverordnung*) – with first-time deliveries the Supplier shall send the safety spec sheet pursuant to German Industry Standard (DIN) 52900 in advance;
- to comply with the principles of the UN Global Compact Initiative ([www.unglobalcompact.org](http://www.unglobalcompact.org)), which essentially relate to human rights protection, collective bargaining rights, the abolition of forced and child labour, the elimination of discrimination in employment and occupation, responsibility for the environment, and the prevention of corruption.

#### **14. Place of jurisdiction and applicable law**

(1) Place of jurisdiction for any and all disputes arising from or in connection with the contract is Hanau. The Purchaser may also assert its claims before the courts of competent jurisdiction of the Supplier. Any exclusive place of jurisdiction shall remain unaffected.

(2) The contract and any matter arising from or in connection with it shall be governed by and construed in accordance with German law to the exclusion of the conflicts of laws provisions and the UN Convention on Contracts for the International Sale of Goods (CISG).