

## Terms and Conditions for Purchase Orders

### 1. Conclusion of contract

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

(2) Terms and conditions of the Supplier shall only apply upon VAC's written consent. Acceptance of or rendering payment for supplies or services of the Supplier shall not constitute consent.

(3) Any purchase order placed by VAC shall become binding upon written confirmation by the Supplier (Purchase Order Confirmation), however, no later than one week after receipt of the purchase order by the Supplier, unless the Supplier objects thereto within such period. Calls for delivery pursuant to a call-off delivery schedule shall be binding unless the Supplier objects thereto within two business days from 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) Agreed dates and time periods shall be binding for the Supplier. Receipt of delivery at VAC's designated receiving location shall be decisive for the timeliness of supplies, irrespective of the agreed Incoterm. For the timeliness of deliveries involving set up or assembly and for the timeliness of services the date on which they are available for acceptance shall be decisive.

(2) Should a delay in any supplies 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 supplies or services, the Supplier shall be obligated to pay 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 supply or service. VAC hereby reserves any and all further rights and claims.

(4) Supplies or services prior to the scheduled date, partial supplies or services or supplies of excessive quantities shall be delivered or performed only upon VAC's prior written 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.

### 3. Shipping

(1) The Supplier shall bear the agreed shipping and packaging costs. *DDP* (Incoterms<sup>®</sup> 2010) shall apply. Any additional costs arising due to the failure to comply with any shipping

instructions or 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 be sent electronically in PDF format to the following address: [rechnungseingang@vacuumschmelze.com](mailto:rechnungseingang@vacuumschmelze.com) (information on electronic invoicing is available at <http://www.vacuumschmelze.com/en/downloads.html>).

### 5. Payment

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

(2) To the extent not otherwise provided in these Terms and Conditions, the payment period shall begin to run as soon as supply or service has been rendered in conformance with the contract and VAC has received a duly issued invoice. To the extent the Supplier is required to provide material tests, test reports, quality documents or other documentation, the supply or service will not be deemed to be in compliance with the contract 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.

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

(4) Acceptance of the supply 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 supply or service being conforming to contract.

### 6. Rescission

VAC may rescind the contract, either in whole or in part, if i) the Supplier's financial position deteriorates; ii) the Supplier discontinues performance; or iii) the Supplier otherwise breaches any contractual obligation.

### 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 rules of technology and technical safety regulations and applicable laws.

(2) Upon delivery of supplies or rendering services, VAC shall check without delay whether they correspond to the ordered quantity and type and whether there is any apparent damage resulting from their transport or any other visible defect. If, during such inspection, VAC notes any apparent damage or defect, it shall notify the Supplier thereof without delay. Should VAC note any damage or defect at a later date, it shall also report this without delay. In so far as it has complied with the aforementioned, VAC shall have no further obligations towards the Supplier concerning checking of the supplies or services at delivery or rendering and any notification resulting therefrom.

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

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

### 8. Involvement of third parties

Purchasing the contractual supplies from third parties or engaging third parties to perform the contractual services, either in whole or in part, is only permitted with VAC's prior written consent. The Supplier thereby shall be equally liable for its own fault and for the fault of third parties.

### 9. Material provided

(1) 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 comply with all applicable regulations, specifically the German Minimum Wage Act (*Mindestlohngesetz*), environmental laws as well as all relevant regulations for the prevention of accidents and other occupational health and safety regulations;
- to apply any labels required under the German Hazardous Substances Regulation (*Gefahrstoffverordnung*) – with first-time deliveries the Supplier shall send the safety data sheet pursuant to Regulation (EC) No 1907/2006 (REACH) in advance;
- to comply with VAC's Code of Conduct (available at <http://www.vacuumschmelze.com/en/downloads.html>);
- to comply with Regulation (EC) No 1907/2006 (REACH) and Directives 2011/65/EU (RoHS) and 2002/96/EC (WEEE), including any amendments of the aforementioned provisions. All supplies must be free from any conflict minerals prohibited pursuant to the Dodd-Frank-Act.

In case third parties are involved (see Paragraph 8), Supplier shall ensure their compliance with the aforementioned regulations.

Upon request, the Supplier shall without undue delay provide VAC with appropriate proof of compliance with the aforementioned regulations. VAC reserves the right to take further appropriate action to verify compliance with the aforementioned regulations, in particular, to inspect the anonymized wage and salary lists for the employees used by the Supplier.

### 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).