



## Terms and Conditions for the Supply of goods and Services – VAC Magnetics LLC

**1. AGREEMENT.** These terms and conditions and the document to which they are attached, constitute the "Agreement" under which VAC Magnetics LLC ("VAC") sells its products ("Products") and services ("Services") to a purchaser ("Buyer"). In the event there is a written agreement signed by both parties that conflicts with the terms and conditions set forth herein, the terms of the written agreement shall control. By placing orders with VAC, Buyer agrees to these terms and conditions. VAC hereby notifies Buyer in advance that VAC objects to any terms and conditions in Buyer's purchase order or other document which are additional to or different than these terms and conditions, whether or not such additional or different terms would materially alter this Agreement, unless such different or additional terms or conditions are specifically agreed to in writing by a duly authorized signing officer of VAC.

**2. DELIVERIES.** VAC shall use reasonable efforts to meet delivery and performance dates, but any such dates shall be estimates only and VAC shall not be liable for failure to do so. VAC reserves the right to make early or partial shipments and invoice Buyer accordingly.

**3. CHANGES.** Buyer may not modify, cancel or otherwise alter orders after the order is in process without VAC's written consent. VAC reserves the right to charge Buyer, and Buyer hereby agrees to pay VAC, a 20% surcharge (calculated as 20% of the order price) for any approved modifications, changes or alterations to any orders after the order is in process. Any such cancellation, modification or alteration shall be subject to additional conditions as may be imposed by VAC at such time, including reimbursing VAC for any costs, expenses and losses relating to such change.

**4. PAYMENT.** Unless different terms are agreed to in writing, Buyer shall pay all invoiced amounts due to VAC within 30 days from the date of VAC's invoice. Buyer shall make all payments hereunder by wire transfer or check and in US dollars. VAC shall issue invoices with shipment of Products or performance of Services. Any amounts unpaid after the due date shall accrue interest at a rate equal to the maximum interest rate and most beneficial time periods allowable by law. If Buyer fails to pay for any one or more shipments when due, VAC shall have the right, in addition to other remedies, to either: (a) suspend or cancel future deliveries; or (b) require cash payment on or before shipment/delivery. Should Buyer's financial viability become unsatisfactory to VAC, cash payment or satisfactory security may be required by VAC before proceeding with further Product deliveries or Service performances. Buyer agrees to furnish VAC with credit information on request. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with VAC, whether relating to VAC's breach, bankruptcy or otherwise.

**5. PRICE.** Unless VAC otherwise states in writing, the price for the Products shall be determined on the date of shipment, as most VAC Products contain metal components whose market value fluctuates. VAC price quotations for Products and/or Services are valid for the time period specified by VAC in the quote. All prices are subject to change by VAC at any time. Prices do not include taxes and in some cases may not reflect metal surcharges.

**6. TAXES.** Buyer shall reimburse VAC for all taxes, excises or other charges that VAC may be required to pay to any governmental entity or collect for any governmental entity upon the production, sale, transportation, delivery or use of the Products and Services sold hereunder.

**7. SHIPMENT.** VAC will ship Products DDP Chicago Airport (Incoterms 2010) unless different terms are agreed to in writing. Title to Products transfers to Buyer upon payment in full. If for any reason title transfers to Buyer before Buyer pays for Products in full, Buyer hereby grants to VAC a lien on and security interest in such Products until payment in full has been received by VAC.

**8. ACCEPTANCE.** Buyer shall inspect the Product for compliance with the order and VAC specifications immediately upon receipt of Product. Failure of Buyer to give written notice of non-acceptance to the carrier and VAC immediately upon receipt shall constitute final acceptance of the Product.

**9. NO LICENSE.** The sale of any Product or Service hereunder does not transfer to Buyer any right or license under any patent, trademark or other intellectual property right with respect to any such Product or Service. VAC retains ownership of all intellectual property rights to the Products and Services sold hereunder.

**10. WARRANTIES.** VAC warrants that Products sold hereunder to Buyer at the time of delivery shall: (a) conform to VAC's standard written specifications for such Products; and (b) be adequately contained, packaged or labeled and shall conform to the affirmations of fact stated thereon. VAC warrants to Buyer that it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement. VAC does not warrant that the use of the Products, Services, or articles made therefrom, either alone or in conjunction with other material, will not infringe any third party intellectual property rights. Determination of the suitability of the Products or Services for the uses and applications contemplated by Buyer and others shall be the sole responsibility of Buyer. Any suggestions or recommendations made by VAC concerning uses or applications of the Products or Services are believed to be reliable, but VAC makes no warranty or guarantee of the results to be obtained since the conditions of the use and application by Buyer and others are beyond VAC's control. VAC is not liable for warranty claims caused by the following: 1) negligence of Buyer or third party; 2) alteration or misuse of the Product or Services; 3) any specification or modification made at the request of Buyer; 4) Buyer's failure to follow health and safety instructions provided by VAC or in accordance with industry standards; or 5) Buyer's failure to comply with laws. Finally, VAC has no liability for any warranty claims: 1) if the Product has not been paid for in full; or 2) unless VAC is given a reasonable opportunity to examine the Products or Services to which the claim relates and Buyer returns any such Products to VAC upon VAC's request.

**11. CLAIM PERIOD; DISCLAIMER.** In no event shall Buyer make a claim or commence any action against VAC later than one (1) year after delivery of the Products or Services to which the claim relates. Buyer's failure to give VAC written notice of any claim or action within the applicable time period shall constitute an absolute and unconditional waiver of such claim or action. EXCEPT AS SET FORTH IN THESE TERMS AND CONDITIONS OF SALE, VAC MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, OR WHETHER ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY. BUYER ASSUMES ALL RISKS RESULTING FROM THE USE OF THE PRODUCT OR SERVICES PURCHASED, WHETHER USED SINGLY OR IN COMBINATION WITH OTHER SUBSTANCES OR IN ANY PROCESS.

**12. LIMITATION OF LIABILITY.** TO THE FULLEST EXTENT ALLOWED BY LAW, BUYER'S EXCLUSIVE REMEDY AGAINST VAC, AND VAC'S SOLE OBLIGATION, FOR ANY AND ALL CLAIMS, WHETHER FOR BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE SHALL BE LIMITED TO EITHER OF THE FOLLOWING, AT VAC'S SOLE DISCRETION: (a) SHIPMENT OF REPLACEMENT PRODUCT OR REPERFORMANCE OF APPLICABLE SERVICES OR (b) CREDIT OR REFUND OF THE PRICE FOR SUCH PRODUCT OR, RESPECTIVELY, SERVICES AT THE PRO RATA CONTRACT RATE. THE PARTIES SHALL NOT BE LIABLE TO EACH OTHER IN ANY ACTION OR CLAIM FOR CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR LOSS OF OPPORTUNITY, WHETHER SUCH ACTION OR CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), STATUTE OR OTHERWISE. TO THE EXTENT PERMITTED BY LAW, ANY STATUTORY REMEDIES WHICH ARE INCONSISTENT WITH THIS PROVISION ARE EXPRESSLY WAIVED BY BUYER. Products claimed to be nonconforming shall not be returned or discarded except as provided below. In no event shall VAC be liable for any loss, damage, cost or expense attributable to any act, omission or misrepresentations by Buyer or any third party.

**13. BUYER OBLIGATIONS.** In addition to other obligations stated herein, Buyer assumes all risk and liability for loss or damage resulting from the handling, use, or application of the Product, Services, and containers delivered hereunder. Buyer agrees to familiarize itself and keep informed (without reliance on VAC) concerning any hazards to persons or property involved in handling and using such Product, Services, and containers. Buyer shall advise its employees, customers, agents, distributors, consultants, independent contractors and others who handle or use such Product or Services of any hazards or who may foreseeably do so. Buyer hereby indemnifies and agrees to defend and hold VAC, its subsidiaries and affiliates and their respective directors, officers, shareholders, customers, employees, agents, successors and assigns of each, harmless from and against any and all liabilities, losses, costs or damages, including reasonable attorney fees, resulting from claims (unless finally determined to be the result of the gross negligence or willful misconduct of VAC) resulting from (a) use or handling of the Product or Services by Buyer or any third party, whether or not the Product is combined with any other materials, substances or equipment or the Product or Services are used in any manufacturing process; (b) failure by Buyer to disseminate safety and health information as required above; (c) failure of Buyer to comply with laws; or (d) misappropriation or infringement of intellectual property rights, including but not limited to patent, trademark or copyright infringement, resulting from use or handling of the Product or Services by Buyer or any third party. Any stenciling, marking or numbering other than that contained on the preprinted VAC label shall not be relied upon and no guarantee of accuracy is made with respect to any such markings.

**14. EXCUSES FOR NONPERFORMANCE.** VAC shall not be responsible for delays in performance due to causes beyond VAC's reasonable control, including but not limited to the acts or omissions of Buyer, acts of God, strikes or other labor disputes, acts of terror, war, plant shutdowns, voluntary or involuntary compliance with any law, order, regulation, recommendation or request of any governmental authority, inability to obtain fuel, material or parts, delays or unavailability of transportation, breakdowns of machinery or equipment, fires, explosions or accidents. In addition, VAC shall be excused in the event of its inability to obtain raw materials necessary for manufacturing the Product. In the event VAC is excused from performing pursuant to this clause, VAC shall have the right to utilize its available production and/or supply to satisfy its own requirements and to allocate remaining production and/or supply among its customers as it sees fit, and Buyer hereby releases VAC from liability for any resulting incomplete fulfillment of any order.

**15. MISCELLANEOUS.** This Agreement is not assignable by Buyer. If any term or condition is declared void, invalid or unenforceable by rule of law, that term or condition will be deemed modified or deleted, but only to the extent required to comply with such rule of law. The parties disclaim applicability of the U.N. Convention on Contracts for the International Sale of Goods to the sale of Products hereunder. This Agreement shall be governed by the laws of the State of Kentucky (USA), regardless of its conflict of laws provisions. Any dispute arising out of or in connection with the Agreement shall be subject to the exclusive jurisdiction of the state or federal courts located in Elizabethtown, Kentucky. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT. This document constitutes the entire written agreement of the parties covering the sale and purchase of the Products and Services and there are no understandings, agreements, representations, express or implied, that are not contained herein. No modification of these terms and conditions shall be binding on VAC unless approved in writing by a duly authorized signing officer of VAC.