

**1. Conclusion of contract**

(1) The following Terms and Conditions shall govern any and all supplies and services, including information and consultations, provided by VACUUMSCHMELZE GmbH & Co. KG (VAC). They shall also govern any and all future supplies or services provided to the Customer 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 additional or conflicting terms and conditions of the Customer except to the extent that it expressly consents thereto in writing. Provision of supplies or services by VAC shall not constitute consent.

(3) Any and all offers by VAC shall be subject to change unless they include a binding period. The contract shall be formed only if VAC confirms the Customer's order in writing or renders the supplies or services upon order without any separate confirmation.

**2. Delivery and performance time**

(1) Agreed deadlines for VAC's supplies and services shall commence only once agreement has been reached on all details for provision thereof and the Customer has taken all necessary co-operative steps, in particular has provided any information, documents or materials to be procured by it and has rendered advance payments or down payments owed by it. Late co-operative actions or changes desired by the Customer shall result in an appropriate extension of the deadlines.

(2) Unforeseeable and unavoidable events (e.g. war, conditions similar to war, deficiencies in energies or raw materials, sabotage, strike) and any and all stoppages or official interventions for which VAC is not responsible shall discharge VAC from its duty to provide supplies and services for the duration of the relevant event, even if they arise during default that has already occurred. Deadlines shall be reasonably extended as a result. This shall also apply to supplies or services of a supplier of VAC that are late or not properly provided for reasons for which VAC is not responsible.

(3) Should VAC default due to a culpable breach of a non-material contractual duty, the Customer may – should it demonstrably have suffered damage as a result of the default – for any completed week VAC is in default, demand flat compensatory damages equivalent to 0.5% of the value of the respective part of the supplies or services with regard to which VAC has defaulted, up to a maximum, however, of 5% for the entire period VAC is in default. Any additional claims on the part of the Customer shall be excluded in all cases of late delivery or performance, even following expiry of a grace period. This shall not apply should VAC be subject to mandatory liability, in particular in cases of wilful conduct, gross negligence or injury to life, limb or health or breach of a material contractual duty. The Customer's right to rescind the contract following fruitless expiry of a grace period shall remain unaffected.

**3. Prices, payments and financial deterioration**

(1) All prices are net prices *ex works* (Incoterms 2000).

(2) In the event of cost increases - in particular in the event of an increase in prices for raw materials, energy and transport services and currency fluctuations - that result in an increase in overall cost for VAC, VAC may adjust the prices of the affected supplies or services in line with the increase in overall costs. Sentence 1 shall apply to supplies and services that are to be provided after the expiry of four months following conclusion of the contract and to supplies and services based on continuous obligations.

(3) VAC's receivables shall become due and payable immediately upon receipt of the invoice. Payments shall be rendered without any reductions free of charge to the designated payment agency within 14 days following delivery of the supplies or rendering of the services by VAC and invoicing to the Customer. Bills of exchange and cheques shall be accepted only based on separate agreement and only on account of performance. Timely payment shall be determined by receipt of the payment and, in the event of payment by bill of exchange or cheque, by the date on which VAC may definitively dispose over the respective amount. Any and all expenses relating to bills of exchange, cheques or discounts as well as any and all other costs shall be borne solely by the Customer.

(4) The Customer shall have a right of set-off or retention only if its counterclaims have been confirmed in a final and binding judgment, are undisputed or have been recognised by VAC.

(5) Should VAC become aware of a material deterioration in the Customer's financial condition following conclusion of the contract (e.g. adverse credit information or interim default in payment), VAC may elect to provide outstanding supplies or services only against advance payment or reasonable provision of security, in which respect, any deadlines for delivery and performance shall be extended accordingly. Outstanding receivables for supplies or services shall become due and payable immediately.

(6) VAC may rescind the contract, if a) the Customer ceases payment, or b) the Customer becomes illiquid or overindebted, or c) an application for insolvency proceedings over the Customer's assets is filed, or d) proceedings for the protection against creditors or the appointment of a trustee or receiver or similar proceeding are initiated as regards the Customer. § 321 of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB) shall remain unaffected.

**4. Assignment of claims**

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

**5. Supplies, services and passing of risk**

(1) Place of performance shall be the place of delivery pursuant to Incoterms 2000. Risk of accidental loss or accidental deterioration in the goods shall pass to the Customer upon delivery at the place of performance. This shall also apply even if partial deliveries are rendered or if VAC provides additional services (e.g. handling of shipping or bearing of shipping costs).

(2) VAC may render partial deliveries or services if VAC informs the Customer without undue delay and delivers or provides the remainder within a reasonable period and this may reasonably be expected of the Customer.

(3) Should delivery be delayed for reasons for which the Customer is responsible, it shall bear the costs for the fruitless offer and for ongoing storage at the delivery works or at another location as selected by VAC. In such cases, the risk of accidental loss or accidental deterioration shall pass to the Customer upon notification that the supplies are ready for shipping.

**6. Retention of title**

(1) VAC shall retain title in the delivered goods and any items resulting from their processing (Retained Goods) until full payment of any and all Customer receivables to which VAC is entitled, even if these are created only following conclusion of the relevant contract. In the case of current account receivables, the retention of title shall secure VAC's balance claims.

(2) Processing shall be permitted only in the ordinary course of business and shall be performed by the Customer for VAC without any obligations inuring to VAC as a result. Should processing involve combination, mixing or mingling with other items delivered subject to an ordinary or extended retention of title, VAC shall acquire joint title in the new items based on the ratio of the gross price agreed between the Customer and VAC to the relevant value of the other items. The Customer hereby transfers to VAC its joint title resulting from any combination, mixing or mingling of the Retained Goods with other items.

(3) The Customer shall exercise the care of a prudent businessman in its possession of items in which VAC holds sole or joint title as custodian for VAC. Should it take out insurance for the Retained Goods, it hereby assigns its claims under the respective insurance policy to VAC; in the event of joint ownership, it hereby assigns such claims to VAC according to the ratio of VAC's joint title interest to all joint title interests.

(4) The Customer may dispose over the Retained Goods only in the event of sale during the ordinary course of business and if it has been ensured that the resultant receivables pass to VAC. It may not effect other dispositions of any kind, in particular pledges and transfers by way of security.

(5) The Customer hereby assigns to VAC as security any receivables to which it is entitled under the sale of or for any other legal grounds pertaining to the Retained Goods. Should the assigned receivables be charged in a current account, the Customer hereby assigns to VAC a portion of its right to the balance, including the closing balance, in an amount equivalent to its resale claim. Should the Customer sell the Retained Goods following processing or following combination, mixing or mingling with other products or together with other products, the assignment of receivables shall be deemed agreed in an amount equivalent to the gross price agreed between the Customer and VAC plus a collateral security margin of 20%. The Customer may collect the receivables assigned to VAC.

(6) VAC may revoke the authorisation to dispose over the Retained Goods and to collect the receivables assigned to VAC at any time should the Customer not duly and properly perform its obligations towards VAC.

(7) The Customer shall furnish VAC at any time with any and all desired information on the Retained Goods and the assigned receivables and shall provide relevant documentation. Upon VAC's request, the Customer shall notify debtors of the assignment.

(8) The Customer must notify VAC of any interventions or claims by third parties, including any measures of compulsory execution, in relation to the Retained Goods or assigned receivables without undue delay and provide any relevant documentation. It shall notify third parties immediately of the retention of title and the assignment by way of security. The Customer shall bear any costs in mounting a defence against such interventions or claims.

(9) Should the Customer default in payment or breach its other obligations under the contract, VAC may repossess the Retained Goods, disclose the transfer by way of security and exploit the Retained Goods and the assigned receivables in order to settle due and payable claims against the Customer. In this event, the Customer shall without undue delay grant VAC or VAC's authorised representative access to the Retained Goods and deliver them up. A demand for furnishing of the Retained Goods by VAC or a compulsory levy of attachment shall not constitute rescission of the contract.

#### **7. Manufacture in accordance with the Customer's instructions**

(1) VAC shall provide no warranty and assume no liability with regard to the functionality of the goods and defects in the event of manufacture in accordance with drawings, samples or other instructions of the Customer, provided such goods or defects are based on such instructions.

(2) The Customer shall indemnify VAC against any and all third party claims based on damage caused by the goods, as far as the damage results from drawings, samples or other instructions by the Customer.

(3) The Customer warrants that the manufacture and delivery of the goods manufactured according to its instructions will not infringe any third party industrial property rights. Should such industrial property rights be asserted by third parties against VAC, VAC may rescind the contract, unless the third party withdraws assertion of the industrial property rights within a reasonable period by way of written declaration to VAC. The Customer shall indemnify VAC against any and all third party claims based on such industrial property rights.

#### **8. Parts, materials and other substances provided by the Customer**

The Customer warrants that parts, materials and other substances provided shall be suitable and free and clear of defects. VAC shall be under no obligation to inspect goods upon receipt or inspect them for their suitability.

#### **9. Property rights and confidentiality**

VAC shall retain title in any and all documents transmitted or furnished to the Customer and the copyright and other industrial property rights in any and all information contained in such documents. These may not be disclosed to third parties and may be used only in the context of the contract with VAC, and, upon request, shall be returned to VAC without undue delay together with any and all copies made.

#### **10. Property of VAC**

Any moulds, tools and construction documents necessary for performance of the contract and created by VAC or on behalf of VAC shall become the sole property of VAC. The Customer shall have no rights thereto, even if it has participated in the costs for the creation of the moulds, tools or construction documents.

#### **11. Technical changes and quantity variances**

(1) VAC reserves the right to make necessary or expedient changes, in particular, in design, material selection, specification or construction type, provided the Customer is notified of such changes in advance and its interests are appropriately taken into account.

(2) In manufacturing special alloys, there may be fluctuations in the production for manufacturing reasons. VAC may deliver excesses or shortfalls, provided VAC informs the Customer of such variances without undue delay and this may reasonably be expected of the Customer. The Customer shall owe payment for the actual amount delivered.

#### **12. Warranty and inspection of goods upon receipt**

(1) VAC warrants that as at the date of passing of risk the goods delivered shall be free and clear of defects that cancel the value or suitability for use as contemplated under the contract or for normal use or that reduce such value or suitability to a significant extent. Any and all goods that manifest a material defect within the limitations period and whose cause already existed at the date of passing of risk shall be, at VAC's choice, repaired free of charge or newly

delivered. VAC provides no warranty for wear and tear due to normal usage and defects resulting from improper use, improper treatment or storage or non-compliance with manufacturers', assembly or operating instructions.

(2) Any and all information provided by VAC, in particular, pictures, drawings, technical information and references to norms and specifications in offers and brochures, are only descriptions and indicators and do not constitute a guarantee of quality or durability within the meaning of § 443 BGB. The same shall apply to the delivery of samples.

(3) Even in the event of prior delivery of samples, the Customer shall inspect the goods without undue delay following delivery and notify VAC in writing of any defects or quantity variances ascertained. Otherwise the goods shall be deemed approved, as far as no latent defects are involved.

(4) The limitations period for warranty claims shall be 12 months. This shall not apply in the event of wilful conduct, malicious concealment of a defect or non-compliance with a guarantee of quality.

(5) The Customer shall enable VAC to perform repairs without undue delay and shall provide the goods subject to the complaint for inspection and processing. Should the repair costs increase due to the fact that the goods have been brought to another location than the place of delivery following delivery, the Customer shall bear such additional costs, unless the relocation conforms with usage in accordance with the relevant provisions.

(6) The Customer shall bear any costs arising from unjustified defect-related complaints. No flat cost charges for defect-related complaints by the Customer shall be recognised.

(7) Should repairs or substitute delivery fail, the Customer may demand reduction of the compensation or rescind the contract without affecting any compensatory damages claims.

(8) Should VAC operate as a materials or parts supplier *vis-à-vis* the Customer, VAC shall not be subject to any liability pursuant to § 478 BGB.

(9) Unless these Terms and Conditions provide otherwise, additional claims on the part of the Customer shall be excluded.

#### **13. Liability**

(1) Any compensatory damages claims on the part of the Customer, whatever the legal basis therefore, in particular, for breach of duties under the obligatory relationship and for tort, shall be excluded.

(2) Paragraph 1 shall not apply in those cases in which:

- a) VAC or a vicarious agent of VAC has acted wilfully or in gross negligence; or
- b) VAC is liable due to culpable injury to life, limb or health by VAC or a vicarious agent of VAC or due to provision of a guarantee of quality; or
- c) VAC or a vicarious agent of VAC breaches a material contractual duty as a result of ordinary negligence and the Customer is particularly dependent on performance of such duty.

In the event of breach of material contractual duties due to ordinary negligence and in the event of grossly negligent conduct on the part of employees and other vicarious agents who are not executive employees, VAC shall be liable only for the typically foreseeable damage taking all relevant and ascertainable circumstances into account.

(3) Liability pursuant to the German Product Liability Act (*Produkthaftungsgesetz*) shall remain unaffected, unless this may be contractually excluded or limited.

(4) No change of the burden of proof to the detriment of the Customer is associated with the foregoing provisions.

#### **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. VAC may also assert its claims before the courts of competent jurisdiction of the Customer. 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).