

## 1. Conclusion of contract

(1) The following terms and conditions for purchase orders (Terms and Conditions) shall govern any and all requests and orders (Purchase Order) placed by Vacuumschmelze China Magnetics (Shenyang) Co., Ltd. (VAC) and to the supplies or services provided to VAC by the Supplier against such Purchase Orders. They shall also govern any and all future supplies or services provided to VAC by the Supplier even where no express reference is made thereto after concluding the contract.

(2) These Terms and Conditions shall govern exclusively. VAC does not acknowledge any 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 the Purchase Order, VAC may revoke its Purchase Order at any time. 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 VAC has 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 on the Supplier. The decisive time point for the timeliness of a delivery shall be the date of receipt of a defect-free delivery at VAC's designated recipient (regardless of the Incoterms agreed). In case the delivery includes set-up, installation, assembly or other services, the decisive time-point for the timeliness of a delivery shall be the date on which all services have been performed in accordance with the contract and VAC has accepted the delivery and the services in writing.

(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, the Supplier shall pay to VAC a contractual penalty 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 and the Supplier's obligation to pay contractual penalties to VAC shall not in any way restrict the Suppliers liability for damages.

(4) Supplies or services may be delivered or performed prior to the scheduled date only subject to VAC's 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.

(5) VAC's written 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 in writing.

(7) VAC may terminate the contract, if a) the Supplier ceases performance, or b) the Supplier becomes illiquid or overindebted, or c) an application for insolvency proceedings over the Supplier's assets is filed, or d) proceedings for the protection against creditors

or the appointment of a trustee or receiver or similar proceedings are initiated as regards the Supplier. This provision is without prejudice to any other statutory or contractual right of VAC to terminate the contract.

## 3. Shipping

(1) The Supplier shall bear the shipping and packaging costs in connection with the deliveries. Unless otherwise specified by VAC, the delivery term shall be DDP (Incoterms 2010). Furthermore, air freight transport shall require VAC's 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. Risk of loss and the title (ownership) shall pass to VAC upon defect-free delivery at the place of receipt specified by VAC.

(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 all data required by law as well as the purchase order number and 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 60 days.

(2) Subject to Clause 2 (4), the payment period shall begin to run upon complete and defect-free 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 has also been provided to VAC. In the event VAC has a justified claim on the Supplier, VAC may in its sole discretion always withhold a corresponding part of the payment, set-off claims or make partial payments.

(3) Payment shall be deemed to be remitted on the date when VAC dispatches a cheque or transfers funds from its account to the Supplier.

(4) Acceptance of the delivery or service or payment shall not constitute any waiver of any claims VAC is entitled to nor does it constitute any acknowledgment of the delivery or service being in conformity with the contract.

## 6. Assignment of claims

Claims of the Supplier against VAC may be assigned only subject to VAC's written consent.

## 7. Claims for defects

(1) The Supplier warrants that all supplies and services are free of any defects, functional and with all respects fit to the intended purpose. In addition, all supplies and services 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 ordinary course of business. VAC shall give notice of any defects without undue delay following discovery thereof. In this respect, the Supplier irrevocably waives the objection of failure to give timely

notice of defects i.e. the obligation of the Supplier to rectify defects shall in no way be restricted as a result of a failure by VAC to give a timely notice of defects.

(3) Unless otherwise agreed by the parties in writing, the minimum warranty period shall be in the case of supplies, 36 months from the delivery and in the case of services, 36 months from the final acceptance of VAC. If the Supplier satisfies its obligation to rectify the defect by carrying out a substitute delivery, the warranty period for the substitute delivery shall begin to run from the time of delivery of the substitute delivery, unless upon the substitute delivery the Supplier expressly and correctly reserved the right to carry out a 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 warranty periods.

(4) VAC shall be entitled to decide how a defect shall be rectified (remedy of defect or defect-free delivery/performance of the contractual supplies/services). The Supplier may not refuse the form of remedy chosen by VAC unless the Supplier is able to demonstrate unreasonable additional costs solely attributable to the selected form of remedy.

(5) In case the Supplier has not rectified a defect after a reasonable period set out by VAC has lapsed, VAC may rectify the defects itself or have these carried out by a third party at the Supplier's expense and the Supplier shall fully reimburse any expenses incurred by VAC. VAC does not have an obligation to set any time period for the Supplier to rectify the defects if this is no longer possible due to reasons of particular urgency, specifically in order to ward off imminent danger or prevent greater damage.

(6) In the case of defects in the title of supplies delivered or services performed under this contract, the Supplier shall indemnify and hold VAC harmless against any third-party claims whatsoever, unless the Supplier is not at fault for said defects in title.

(7) The Supplier shall indemnify and hold VAC harmless in connection with any product liability claims, costs and expenses resulting from defective supplies or services delivered by the Supplier including but not limited to costs of any repair/recall actions.

(8) The provisions in this Chapter 7 are without prejudice to any other statutory of contractual right or claim for defects.

## 8. Sub-contractors

The Supplier shall not employ any subcontractor or any third parties to perform or assist with the contractual services, either in whole or in part, without VAC's written consent. Where VAC has granted such consent, the Supplier shall be liable for the performance of the subcontractors as for its own performance.

## 9. VAC's material and intellectual property rights

(1) Unless otherwise agreed, this contract (i) shall have no effect on the intellectual property rights or to any other rights of VAC that existed prior to the effective date, and (ii) shall not alter VAC's rights to any documentation, material, trademarks or parts thereof furnished by VAC to Supplier.

(2) The Supplier hereby represents and warrants that supplies or services to VAC do not violate any intellectual property rights of third parties. In the event of any claim presented to VAC based on violation of intellectual property rights, the Supplier shall indemnify VAC for all damages, cost and expenses arising out of or in connection with such a claim or infringement. VAC will allow the Supplier to either independently plead or intervene in the proceedings regarding such infringement claim. Should the supplies or services to VAC be found to infringe intellectual property rights of third parties, the Supplier shall, without cost to VAC, modify the supplies and/or services to be non-infringing or shall obtain and maintain such licence and rights from the third party as required for the unrestricted, continuous use of the supplies and/or services delivered.

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

## 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 have lawful knowledge thereof from another source. Confidential information shall include all information marked as confidential or which should be understood as confidential.

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

## 11. 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 contract. 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.

## 12. Miscellaneous

The Supplier agrees:

- to comply with the relevant regulations for the prevention of accidents, other occupational health and safety regulations, and recognised rules of safety and occupational medicine;
- to comply with all relevant laws including but not limited to environmental laws, and apply procedures which are as environmentally friendly as possible based on the current state of the art;
- to comply with Regulation (EC) No 1907/2006 (REACH) and Directives 2002/95/EC (RoHS) and 2002/96/EC (WEEE), including any amendments of the aforementioned provisions;
- 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; and
- to comply with VAC's Code of Conduct.

## 13. Place of jurisdiction and applicable law

(1) Any disputes hereunder shall be resolved exclusively by arbitration in Hong Kong under the auspices of the Hong Kong International Arbitration Centre and in accordance with the UNCITRAL Arbitration Rules then in effect. The arbitration award shall be final and binding on the parties. A party shall be entitled to seek preliminary injunctive relief, if possible, from any court of competent jurisdiction pending the arbitration award.

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