

## General Purchasing Terms

of

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### § 1 Scope

- (1) All deliveries, services and offers by our suppliers shall occur exclusively based on these General Purchasing Terms. These shall form part of all agreements we conclude with our suppliers and business partners ("Supplier") concerning the goods or services they offer. In their respective version, they shall also apply as a master agreement for all future supplies, services or offers of the same supplier to us as the customer, even if they are not separately agreed and without to refer to them again in each individual case. The respective current version can be downloaded from **[www.va-Q-tec.com](http://www.va-Q-tec.com)**. The purchasing terms shall only be applicable if the Supplier is a company (Section 14 of the German Civil Code [BGB]) or a special government fund.
- (2) These purchasing terms shall apply exclusively. The business terms of our suppliers or third parties shall not be applicable, even if we do not separately object to their validity in an individual case. Even if we refer to a document that contains the terms and conditions of the Supplier or a third party or refers to such, or if we unconditionally accept the Supplier's deliveries in the knowledge of such terms and conditions, this does not substantiate any acceptance on our part of the validity of such terms and conditions.
- (3) Individual agreements agreed with the Supplier in an individual case shall take precedence over such purchasing terms. For this purpose, and for this type of content, however, a written agreement or a written confirmation from us shall be required.
- (4) In case of contradictions between the German and the English version of these Terms, the German version shall prevail.

### § 2 Orders and contracts

- (1) Offers by the Supplier shall always be free of cost for us. Our orders shall be valid as binding at the earliest when written issuance or confirmation is given. Deliveries without written orders or

confirmations shall not be accepted. Our lack of response to any offers or any other type of declarations or solicitations on the part of the Supplier shall not be deemed as an approval. If our offers in relation to the arrangement of a contract do not expressly include a fixed period, we shall regard ourselves as bound to it one week after the date of the offer. Our receipt of the acceptance statement (written contract confirmation) shall determine acceptance on time. If an acceptance is modified or delayed, it shall be deemed to represent a new offer by the Supplier, which shall always require our acceptance.

- (2) The delivery time that we stipulate as well as the place of delivery that we stipulate shall be binding for the Supplier. We are entitled, however, to amend the time and place of delivery as well as the type of packaging at any time by written communication with a period of at least 14 calendar days before the agreed delivery date. The same shall apply for modifications to product specifications, if they can be implemented as part of the normal production process of the Supplier without significant additional expense, whereby the notification period pursuant to the above clause shall amount to at least one month. If such modifications lead to delivery delays that are unavoidable in the normal production and business operations of the Supplier without unreasonable efforts, and following prior explanation by the Supplier, we shall agree to a corresponding rearrangement of the originally agreed delivery date through a separate statement. The Supplier shall notify us in writing concerning the additional costs it expects, which in all cases it shall estimate carefully in the form of an updated, comprehensible product calculation, as well as concerning any expected delivery delays in good time before the delivery date, albeit at least within 7 working days after receipt of our communication pursuant to Clause 2.
- (3) We are entitled to terminate the agreement at any time by way of written declaration, stating the reason, if we can no longer utilise the ordered products in our business operations due to circumstances that arise after the agreement has been concluded. In such case, we shall compensate the Supplier for the partial work it has rendered, on receipt of related proof, if the Supplier is unable to utilise such work in another manner. Any compensation of proven partial work shall be excluded, if the Supplier fails to make such other utilisation at least through negligence.

### **§ 3 Prices, payment, invoice**

- (1) The price shown on the order shall be binding. All prices shall be exclusive of statutory turnover taxes, even if these are not shown separately.
- (2) Unless a divergent written agreement exists, the price shall include all services and ancillary services as well as all ancillary costs of the Supplier, particularly delivery and transport to the delivery address stipulated in the agreements, including packaging and any customs tariffs, insurance or import duties.
- (3) Upon our request, the Supplier shall be obliged to take back the packaging at its cost.
- (4) Invoices are to be sent separately from the goods delivery.
- (5) Unless agreed otherwise, from the time of the delivery of the goods and the receipt of the invoice, we shall pay the purchase price within 14 days with a 3 % discount or within 60 days net. The receipt of our transfer mandate at our bank shall be sufficient for our owed payments to be received on time.
- (6) All contract confirmations, delivery papers and invoices are to at least include our order number, article number, article description, delivery volume and delivery address. Should one or several of such items of information be missing, thereby delaying processing by us as part of our normal business

transactions, the payment deadline specified in Paragraph 5 shall extend to comprise the period of the delay.

- (7) In the case of delay on payment, we shall be liable for default interest in an amount of five percentage points above the base interest rate pursuant to Section 247 of the German Civil Code (BGB). Statutory regulations shall apply in the instance of default. By way of divergence from this, however, the receipt of a written reminder from the Supplier shall be required in all cases.
- (8) In the case of deliveries implemented before the agreed date by the Supplier and freely accepted by us on the basis of goodwill, the due date for the payment and its calculation shall be solely according to the originally agreed delivery date.

#### **§ 4 Delivery time and delivery, transfer of risk**

- (1) The delivery time (delivery date or delivery period) stated by us in the order or otherwise applicable pursuant to these General Purchasing Terms shall be binding. Early deliveries shall not be permitted without our prior written approval.
- (2) Unless agreed otherwise in an individual case, deliveries to us shall be made "free delivery" (INCOTERMS 2010 DDP delivered at place) to the destination stipulated in the order. If no destination is stipulated in the order, deliveries shall in each case be to the plant of va-Q-tec AG that has placed the order.
- (3) The Supplier shall be obligated to inform us immediately in writing if circumstances arise or become identifiable whereby the delivery time cannot be complied with.
- (4) If the date on which the delivery is to occur at the latest can be determined based on the contract, the Supplier shall be in default as of the end of such date without requiring us to issue a related reminder.
- (5) In the instance of delay in delivery, we shall be entitled on an unrestricted basis to statutory claims, including the right to withdrawal and the right to damage compensation, instead of performance after the abortive expiry of an appropriate period of additional time for performance.
- (6) In the case of delivery delays after prior written warning to the Supplier, we are entitled for each day commenced of delivery default to demand the contractual penalty of 0.2 % of the respective contract value, up to a maximum total of 5 %. The contractual penalty is to be deducted from the damage in relation to late delivery. We can enforce the contractual penalty up to invoicing – a declaration on our part of a related reservation given any acceptance of a late delivery shall not be required.
- (7) In no instance shall any acceptance on our part of late deliveries constitute a waiver of damage compensation claims or of the contractual penalty.
- (8) The Supplier shall not be entitled to make partial deliveries without our prior written consent. The same shall apply for partial or complete deliveries before the agreed delivery deadline.
- (9) Including when the dispatch has been agreed, risk shall not be transferred to us until the goods have been handed over at the agreed place of delivery.
- (10) If a Supplier is unable to comply with the delivery date due to force majeure, no delay or default consequences will be enforced for a period of 1 month from the occurrence of the event if the Supplier notifies us immediately of the occurrence of an event of force majeure and has immediately

taken all measures to mitigate our damage. Force majeure shall be deemed to be an event arising externally which exhibits no operative connection and is also unavoidable despite the utmost care that can be reasonably expected, consequently natural phenomena, fire, war, unrest, terrorism or sabotage, for example. Strikes and labour conflict shall be deemed to be force majeure only if they do not occur at the Supplier or within its group of companies, but at a third party. By contrast, the following examples shall not be deemed instances of force majeure: turmoil, natural events predictable in the Supplier's region, accidents, scarcity of energy or raw materials, operational interruption, operational reorganisation, delayed or erroneous deliveries, or transportation problems. If the event or its consequences for the Supplier and its capability to produce and supply lasts for longer than 1 month, we are entitled to cancel the contract with the Supplier with immediate effect, without this thereby substantiating rights or claims for the Supplier. In such a case, we reserve the right to all supplementary further-reaching rights, expressly including those relating to damage compensation. This shall apply particularly for additional costs of replacement procurement as well as all types of damages and losses deriving from the non-performance of the delivery.

## **§ 5 Ownership**

- (1) We reserve the right of ownership and/or copyright to orders and contracts we issue, as well as drawings, designs, calculations, descriptions and other documents we make available to the Supplier. Without our express consent, the Supplier may not make them available to third Parties or utilise or reproduce them itself – especially for the purposes of third Parties – or let them be utilised or reproduced by third parties. Upon request, the Supplier shall return such documents in full to us, if it no longer requires them as part of regular business, or if negotiations do not lead to the arrangement of a contract. Copies made of such documents by the Supplier are to be destroyed in such a case; exceptions shall include only archiving as part of statutory archiving obligations as well as the backing up of data as part of standard data backups.
- (2) If the preconditions exist, the Parties shall conclude a dedicated tool agreement. Otherwise, the following shall apply: tools, appliances and models we provide to the Supplier or which are produced for contractual purposes and which the Supplier invoices us for separately shall remain our property or shall be transferred to our ownership. They are to be clearly designated as our property by the Supplier, stored carefully, secured against any type of damage, and utilised only for the contractual purposes. The Supplier alone shall bear the costs of maintaining and repairing them – barring any other agreement, or until the arrangement of another agreement. With the previous clause being unaffected, the bearing of costs by the Supplier shall continue to apply, and especially also in cases where such types of costs are attributable to defects on the part of objects produced by the Supplier or to inappropriate use by the Supplier, its employees or other vicarious agents. The Supplier shall inform us immediately of all damages to such objects, including minor damages. On demand and, where applicable, against payment of evidenced and any residual tool costs for which we are liable, the Supplier shall be obligated to return the objects in a proper condition to us, if the Supplier no longer needs them to fulfil the contracts concluded with us. The Supplier shall waive any right of retention. If a dedicated tool agreement has been concluded between the Parties, this shall take precedence over this paragraph in the respective regulated items.
- (3) Reservations of ownership of the Supplier shall apply only to the extent that they relate to our payment obligation for the respective products in which the Supplier reserves ownership. In particular, expanded or extended reservations of ownership shall be impermissible and excluded in all instances.

## **§ 6 Warranty claims**

- (1) In the case of defects, we shall be entitled to statutory claims on an unrestricted basis. By way of divergence from this, however, the warranty period shall amount to 36 months after the transfer of risk.
- (2) In relation to the commercial obligation to investigate and make immediate complaint pursuant to Sections 377, 381 of the German Commercial Code (HGB), the statutory regulations shall apply with the provision that our obligation to investigate shall be restricted to defects that in each case we can clearly externally identify at our goods entry control while making recourse to the delivery papers as well as a visual control. To this extent, we are required to examine the delivery only in relation to identity, quantity as well as visible identifiable damages (e.g. transportation damages).
- (3) Complaints concerning divergences identifiable as part of the examination pursuant to Paragraph 2 shall in each case be notified on time if we notify the Supplier within 21 working days after we have received the goods. Complaints concerning hidden, and consequently not openly identifiable, divergences, especially including quality defects, shall in each case be deemed as notified on time if the notification of the Supplier occurs within 21 working days after discovery.
- (4) We shall not waive warranty claims through acceptance or approval of samples or specimens that have been submitted to us.
- (5) With the receipt of our written notification of defects by the Supplier, the application of the statute of limitations to warranty claims shall be suspended until the Supplier rejects our claims or declares the defect eliminated, or refuses in another manner to continue negotiations concerning our claims. In the case of replacement delivery or the elimination of defects, the warranty period for replaced and subsequently improved parts shall commence again, unless the Supplier's behaviour has led us to assume that the Supplier did not regard itself as obligated to implement the measure, and instead made the replacement delivery or eliminated the defect only for goodwill or similar reasons.

## **§ 7 Product liability**

- (1) The Supplier shall be responsible for all claims asserted by third parties due to personal injury or damage to property that are attributable to a product it erroneously delivers, and shall be obligated to indemnify us from any resultant liability. If we are obligated to conduct a recall action in relation to third parties due to an error in a product delivered by the Supplier or to agree to such a type of recall action from one of our customers for the same reason, or to bear the costs of such a recall action, the Supplier shall bear all costs connected with the recall action – including those conducted by third parties – and/or costs incurred in consequence. We shall notify the Supplier of any recall action conducted by us or third parties, enabling the Supplier to collaborate appropriately, unless this proves impossible due to particular urgency.
- (2) The Supplier shall be obligated to obtain product liability insurance at its own cost with a cover amount of at least EUR 10,000,000.00, which, unless agreed otherwise, shall also cover the recall risk or penal or similar damages. On demand, the Supplier shall send to us at any time a copy of the third-party liability policy.

## **§ 8 Property rights**

- (1) Pursuant to Paragraph 2, the Supplier shall guarantee that the products it supplies do not infringe property rights or patent filings of third parties in countries of the European Union or other countries in which it manufactures, or contracts the manufacturing, of products.

- (2) The supply should be obligated to indemnify us from all claims that third parties bring against us due to the infringement of industrial property rights as specified in Paragraph 1 and shall reimburse all necessary expenses in connection with such demands. This claim shall exist independently of any fault on the part of the Supplier.
- (3) Our further-reaching statutory claims, including due to legal defects in the products supplied to us, shall be hereby unaffected.

#### **§ 9 Replacement parts**

- (1) The Supplier shall be obligated to deliver replacement parts for the products it delivers to us for a period of at least 15 years after delivery.
- (2) If the Supplier intends to discontinue the production of replacement parts for the products it delivers to us, it shall immediately inform us after deciding on such discontinuation. Subject to Paragraph 1, this decision must occur at least 12 months before the discontinuation of production.

#### **§ 10 Conformity with regulations, compliance with international social standards**

- (1) In the meaning of a minimum standard, the Supplier shall be obligated to comply with all technical regulations, standards and public-law as well as statutory regulations relevant for the respective delivery object, in each case in the widest sense of the term, in other words, especially, although not conclusively, DIN standards, VDE and VDI provisions as well as CE provisions, even if this is not agreed separately.
- (2) We commit ourselves to be compliant with the international social standard SA 8000. Therefore, all our suppliers are also obliged to be compliant with this standard ([www.sa-intl.org/SA8000](http://www.sa-intl.org/SA8000)) and to submit unsolicited appropriate proof of such compliance. Furthermore, we have the right to audit compliance at the Supplier's plant. Detected deviations shall be corrected immediately.

#### **§ 11 Confidentiality**

- (3) The Supplier shall be obligated to maintain confidentiality concerning the terms of the order as well as all information and documents made available to it for this purpose (except publicly accessible information) for a period of five years after the contract has been concluded, and to utilise it only to fulfil the order. On demand, and after responding to queries or processing orders, the Supplier shall immediately return such items to us.
- (4) Without our prior written consent, the Supplier may not refer to our business relationship in advertising materials and brochures etc., and shall not exhibit delivery objects produced for us.
- (5) The Supplier shall obligate its sub-suppliers accordingly in compliance with this Paragraph 11.
- (6) If a dedicated confidentiality agreement has been arranged between the Parties, this shall take precedence over this paragraph in the respective regulated items.

#### **§ 12 Assignment**

The Supplier is not entitled to assign its receivables from the contractual relationship to third parties. This shall not apply to the extent it relates to monetary receivables.

### **§ 13 Place of satisfaction, place of jurisdiction, applicable law**

- (1) The place of satisfaction for both Parties and the exclusive place of jurisdiction for all litigation deriving from the contractual relationship shall be Würzburg. We shall nevertheless shall have a free choice in this matter and are consequently entitled to also bring a lawsuit against the Supplier at its place of jurisdiction.
  
- (2) The contract concluded between us and the Supplier shall be subject to the law of the Federal Republic of Germany under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (UN Sales Convention).

### **§ 14 Severability clause**

To the extent that this agreement or these terms include loopholes in the regulations, to fill such loopholes those legally effective regulation shall be deemed to be agreed which the contractual partners would have agreed according to the economic objectives of the agreement and the purposes of these terms, if they had been aware of the loophole.

#### **Note:**

The Supplier shall note that we save data from the contractual relationship pursuant to Section 28 of the German Federal Data Protection Act (BSDG) and, after it became effective, Article 6 of the German Data Protection Basic Regulation (DSGVO), for data processing purposes, and reserve the right to convey such data to third parties, to the extent required to fulfil the contract.