

# Conditions of Purchase

## 1. Scope; conclusion of contracts

1.1 These Conditions of Purchase shall apply to deliveries and services of the Supplier, unless otherwise agreed. Other general standard terms and conditions, in particular standard terms and conditions of the Supplier, shall not apply even if they are not expressly objected to in an individual case or if ordered goods/services have been accepted without reservation.

1.2 Orders and their acceptance shall be in writing. Acceptance of orders shall be acknowledged on the form intended for this purpose on the order, unless otherwise agreed.

1.3 Oral agreements, of whatever nature, shall not be valid unless confirmed in writing by the Customer. Written form shall also include confirmations sent by email, data transfer or fax.

1.4 If the Supplier does not accept orders within two weeks of their receipt, the Customer shall be permitted to revoke them at no cost.

## 2. Delivery; consequences of failure to meet delivery times and remedies in case of defects

2.1 The Supplier shall deliver the goods on the date specified in the order. The Customer shall be notified immediately of any circumstances which prevent the delivery time from being met or delay in delivery.

2.2 The Supplier shall deliver the goods to, or the service is completed, at the Customer's premises or such other location as is set out in the order ("place of performance").

2.3 The Supplier shall deliver the goods during the Customer's normal business hours, or as instructed by the Customer.

2.4 Delivery of the goods shall be completed on the completion of unloading the goods at the Customer's premises or other agreed location or performing the service at the place of performance.

2.5 The Supplier shall not deliver the goods in instalments without the Customer's prior written consent. Where it is agreed that the goods are to be delivered by instalments, they may be invoiced and paid for separately.

However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Customer to the remedies set out in clause 2.7.

2.6 The Supplier is obliged to ensure that goods it has supplied or spare parts for them can be supplied to the Customer on reasonable terms and conditions for a period of 15 years after the last delivery. If the Supplier intends to discontinue supplying such goods or spare parts for them during this period of time or after this period of time expires, it shall inform the Customer immediately in writing and give the Customer the opportunity to place last orders.

2.7 If the goods are not delivered or services performed on the date they are due as referred to in clause 2.1, or do not comply with the undertakings set out in clause 7.1, then, without limitation any of its other rights or remedies, the Customer shall have the right to any one or more of the following remedies, whether or not it has accepted the goods:

- 2.7.1 to terminate the contract;
- 2.7.2 to reject the goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
- 2.7.3 to require the Supplier to repair or replace the rejected goods, or to provide a full refund of the price of the rejected goods, if paid;
- 2.7.4 to refuse to accept any subsequent delivery of the goods which the Supplier attempts to make;
- 2.7.5 to repair or replace the goods with another third party supplier and recover from the Supplier any costs incurred by the Customer in obtaining replacement goods or repairs to the goods from a third party; and
- 2.7.6 to claim damages for any other costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to carry out its obligations under the contract.

2.8 If agreed delivery/performance times are not observed, the Customer may at its option claim or deduct by way of liquidated damages for each complete week by which the deadline is overrun an amount of 0.5%, but a maximum of 5%, of the total order value without having to furnish proof of damage or loss, unless otherwise agreed explicitly. If the Customer exercises its rights under this clause 2.8, it shall be entitled to terminate the contract under clause 2.7.1, but shall not be entitled to any of the other remedies set out in clause 2.7 in respect of the goods' late delivery (but

such remedies shall be available in respect of the goods' condition).

2.9 These Conditions of Purchase shall apply to any repaired or replacement goods supplied by the Supplier.

2.10 The Supplier shall keep the Customer indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with:

- 2.10.1 any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the supply or use of the goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- 2.10.2 any claim made against the Customer by a third party arising out of, or in connection with, the supply of the goods, to the extent that such claim arises out of the breach, negligent performance of failure or delay in performance of the contract by the Supplier, its employees, agents or subcontractors; and
- 2.10.3 any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in goods, to the extent that the defect in the goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.

This clause 2.10 shall survive termination of the contract.

2.11 The Customer's rights and remedies under these Conditions of Purchase are in addition to its rights and remedies implied by statute and common law.

### **3. Prices; terms of payment; transfer of risk**

3.1 The price specified in the order shall be binding. Unless otherwise agreed, the prices are delivered at place (DAP) in accordance with Incoterms 2010, including packaging, insurance and carriage of the goods. No extra charges shall be effective unless agreed in writing and signed by the Customer. The specified price does not include statutory value-added tax, which shall only be payable if the Customer receives a valid VAT invoice from the Supplier on any goods where VAT may be chargeable.

3.2 Invoices can only be processed if – in accordance with the stipulations in the order – they specify the order number stated in the order and all other reference information; the Supplier shall be responsible for all the consequences of a

failure to comply with this obligation, unless it proves that it is not to blame for said failure.

3.3 Unless otherwise agreed, invoices shall be settled on the following basis, either:

- 3.3.1 a discount of 3% will be applied and the invoice paid within 14 days; or
- 3.3.2 net within 60 days,

as of the date the demand for payment is due and receipt of both the invoice and the goods/performance of the service in accordance with these Conditions of Purchase.

3.4 The Supplier shall bear the risk of accidental loss and accidental deterioration of the goods until they have been accepted by the Customer or its agent at the place where the goods are to be delivered as instructed.

3.5 Title and risk in the goods shall pass to the Customer on completion of delivery at the place of performance in accordance with clause 2.2 of these Conditions of Purchase.

3.6 The Customer may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Supplier against any amounts payable by it to the Supplier under the contract.

### **4. Acceptance testing**

4.1 In case of a work supply or work performance contract, acceptance testing of deliveries and/or services or parts of them is essential. In the event such work supply or work performance requires commissioning, the acceptance testing shall be performed after successful commissioning. At the Customer's option, the acceptance testing shall be conducted at the Supplier's premises, or at the place of delivery.

4.2 For all other work types, if an official inspection or acceptance testing of deliveries and/or services or parts of them is stipulated in an order, this shall be conducted at the Supplier's premises, unless otherwise agreed in writing by the Customer.

4.3 If the results of such official inspection or acceptance testing is to the Customer's satisfaction, the Customer shall issue a formal acceptance certificate to the Supplier, unless otherwise agreed between the parties in writing.

4.4 If following such official inspection or acceptance testing the Customer considers that the deliveries and/or services or parts of them are not satisfactory, and/or do not conform or are unlikely to conform with the Supplier's undertakings at clause 7.1, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is

necessary to ensure such deliveries and/or services or parts of them are to a satisfactory standard.

4.5 The cost of the acceptance testing shall be borne by the Supplier.

4.6 Payment in full or in part of the price shall be without prejudice to any claims or rights of the Customer against the Supplier in respect of the provision of the deliveries and/or services or parts of them, and shall neither constitute acceptance or approval of the deliveries, nor shall they constitute any waiver of claims for defects.

## 5. Shipment

5.1 Notification of shipment of the goods shall be given by, at the latest, the time the deliveries leave the Suppliers' works. The shipping address and the Customer's order number, including the item number, shall be indicated on all notices of shipment, bills of lading and parcel labels. Consignments for which the Customer is to bear all or part of the freight costs shall be transported at the lowest freight rates or according to the Customer's shipping instructions. The shipping instructions, in particular the place where the goods are to be delivered, which is also the place of performance, shall be stated in the order.

5.2 The Supplier shall have the cargo secured by the carrier collecting it in order to prevent damage in transit due to the cargo being secured inadequately or not at all.

## 6. Packaging

6.1 The Supplier shall, wherever possible, ship the goods it has produced or processed in packaging that is environmentally friendly in terms of type, shape and size.

6.2 The Supplier shall ensure that the goods are properly packaged and secure in such manner as to enable them to reach their destination in good condition.

6.3 If the Supplier requires the Customer to return any packaging material to the Supplier, that fact must be clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.

## 7. The goods; notice of defects

7.1 The Supplier shall ensure that the goods shall:

- 7.1.1 correspond with their description and any applicable specification for the goods, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier;
- 7.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for purpose held out by the Supplier or made

known to the Supplier by the Customer expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement;

- 7.1.3 where applicable, be free from defects in design, material and workmanship and remain so for a period of 24 months from the date of successful installation at the place of performance, or a period of 36 months after delivery, whichever is the latest date; and
- 7.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the goods.

7.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the contract.

7.3 The Customer shall endeavour to check incoming deliveries for their correct quantity, damage in transit and obvious defects, insofar and as soon as this is expedient in the ordinary course of business. The Customer shall report defects as soon as they are discovered. In this regard, the Supplier waives the argument of receiving delayed notice of defects.

## 8. Termination

8.1 The Customer may terminate the contract in whole or in part at any time before delivery with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the contract. The Customer shall pay the Supplier fair and reasonable compensation for work-in-progress at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

8.2 The Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier becomes subject to any of the following events:

- 8.2.1 the Supplier suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;

- 8.2.2 the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Supplier is a company) these events take place for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- 8.2.3 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier, other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- 8.2.4 (being an individual) the Supplier is the subject of a bankruptcy petition or order;
- 8.2.5 a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 8.2.6 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier;
- 8.2.7 (being a company) a floating charge holder over the Supplier's assets has become entitled to appoint or has appointed an administrative receiver;
- 8.2.8 a person becomes entitled to appoint a receiver over the Supplier's assets or a receiver is appointed over the Supplier's assets;
- 8.2.9 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2.1 to clause 8.2.8 inclusive;
- 8.2.10 the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on, all or substantially the whole of its business;
- 8.2.11 the Supplier's financial position deteriorates to such an extent that in the Customer's opinion the Supplier's capability to adequately fulfil its obligations under the contract has been placed in jeopardy; or

8.2.12 (being an individual) the Supplier dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

8.3 Termination of the contract, however arising, shall not affect any of the Customer's rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the contract shall continue in full force and effect.

## 9. Software

9.1 The Customer shall obtain the right to use software that is part of the scope of delivery, including the documentation for it, with the agreed features and to the extent necessary for ensuring use of the software in compliance with the contract or permitted by law (Copyright, Designs and Patents Act 1988).

9.2 Before the software is shipped or installed on a system of the Customer or its end customers, the Supplier shall check it for viruses, Trojans and other computer malware using up-to-date, customary antivirus programmes.

## 10. Quality assurance

10.1 The Supplier warrants permanent quality assurance for its goods by means of installation of an adequate quality assurance system, e.g. ISO 9001 or similar and undertaking of quality tests and checks that are prescribed by the Customer or are otherwise suitable during and after production of its deliverables. The Supplier shall create documentation on these tests and checks.

10.2 The Customer shall have the right to require proof of the quality assurance system installed at the Supplier, to satisfy itself of how the quality tests and checks are carried out on site, including if applicable at subcontractors' premises and to conduct audits at the Supplier's site.

10.3 Without being requested to do so, the Supplier shall immediately inform the Customer of changes in the composition of the processed material or design of its deliveries or services. The changes shall require the written consent of the Customer. For the avoidance of doubt, this obligation shall still apply where the Customer has consented to the Supplier subcontracting all or any of its obligations under the contract to a third party.

10.4 The quality assurance policy of the Customer disclosed to the Supplier and the quality assurance agreements concluded with the Supplier shall be part of the contract between the Customer and the Supplier on these Conditions of Purchase.

## **11. Requirements for marketing products; product liability; insurance**

11.1 If it supplies products which fall under the scope of application of a European Directive for first-time placing on the market, such as the EU Machinery Directive, Pressure Equipment Directive, EMC Directive, etc., the Supplier undertakes that it shall comply with the relevant health and safety requirements and processes specified in them. If provided for in these Directives, the Supplier shall issue an EC declaration of conformity for its products and shall affix a CE mark.

In the case of partly completed machinery according to the EC Machinery Directive No. 2006/42/EC, the Supplier shall provide the Customer with a declaration of incorporation according to Annex II B of the EC Machinery Directive in the form requested by the Customer (extended declaration of incorporation) as well as in addition provide instructions for use in accordance with Section 1.7.4 of Annex I of the EC Machinery Directive. If requested by the Customer, the Supplier shall at the Customer's discretion either allow the Customer to inspect the risk assessment created by it or shall provide it to the Customer.

11.2 During the term of the contract and for a period of six (6) years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover such heads of liability as may arise under or in connection with the contract between the parties on these Conditions of Purchase, and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

## **12. Safety; protection of the environment**

12.1 The Supplier shall ensure that its deliveries and services meet the environmental protection, accident prevention and work safety or further security or safety regulations in force at the premises of the Customer or other known place of performance, in order to avoid or reduce harmful impacts on human beings and environment. To this end, the Supplier shall install and enhance a management system, e.g. ISO 14001 or similar. The Customer shall have the right, if applicable to require proof of the management system installed at the Supplier and to conduct audits at the Supplier's site.

12.2 The Supplier has to comply with the relevant provisions on the handling and placing on the market of hazardous goods as included amongst other in the EC Directive concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), the law on Chemical Substances and the ordinance on hazardous substances. The Supplier further has to observe the relevant provisions on the disposal of waste and recycling material and point out

any product handling, product storage and disposal requirements to the Customer.

## **13. Models and tools; confidentiality**

13.1 Any models and tools which are produced by the Supplier at the Customer's expense shall become the property of the Customer upon payment for them. They shall be treated with care by the Supplier, indicated as property of the Customer and – where possible – stored separately from the other products of the Supplier, as well as insured at the expense of the Supplier against disasters such as fire, water, theft, loss and other damage. Resale of the parts produced using these models and tools shall not be permitted without the express written approval of the Customer.

13.2 A party ("receiving party") shall keep in strict confidence all technical or commercial know-how, Specifications, inventions, processes or initiatives which are disclosed to the receiving party by the other party ("disclosing party"), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products or its services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents or subcontractors who need to know the same for the purpose of discharging the receiving party's obligations under the contract between the parties, and shall ensure that such employees, agents or subcontractors shall keep such information confidential.

## **14. Data Protection**

Where applicable, any dealings by either party of personal data as defined in the Data Protection Act 1998 shall be carried out in accordance with the obligations and requirements of the Data Protection Act 1998 or any equivalent domestic provision.

## **15. Export control**

15.1 If requested to do so by the Customer, the Supplier must submit a supplier's declaration to satisfy the requirements of EC Directive 1207/2001. The Supplier must provide the Customer with it in good time, at the latest on the acceptance of an order. If long-term supplier declarations are used, the Supplier must notify the Customer of any changes in originating status when an order is accepted. The actual country of origin must be stated on the shipping documents in all cases, even if no preferential status applies.

15.2 The Supplier must inform the Customer of any approvals required on the (re-)export of its goods by European, UK, US or other applicable export or customs regulations. For this purpose the Supplier will, insofar as this was not already provided in its offer, supply the following information next to the relevant item references at the



Customer's request when an order is accepted and on every delivery note:

- The commodity code (HS code)
- The export list number in accordance with Annexes I and IV of the EC Dual-Use Regulation No. 428/2009 in its valid version - The ECCN (Export Control Classification Number) in accordance with US export law (if applicable).
- Any other code relating to the export of the goods, as requested in a Customer order.

15.3 At the request of the Customer, the Supplier shall be obliged to inform the Customer in writing of all further foreign trade data related to the goods and its components, as well as inform the Customer immediately in writing of all changes to the data specified in Section 15.2.

15.4 If details in accordance with the previous sections are not provided or are provided incorrectly, the Customer shall, without prejudice to further rights be authorised to rescind the contract.

## 16. Entrepreneurial responsibility; Code of Conduct

The Supplier declares its commitment within the scope of its entrepreneurial responsibility to ensuring that it complies with legal provisions, including environmental protection laws, regulations relating to labour law and laws on the safety of employees, and does not tolerate child or forced labour in or in relation to the production and sale of its goods or the provision of its services. Upon accepting the order, the Supplier further confirms that it shall not commit or tolerate any form of bribery and corruption and that it shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption, including (but not limited) to the Bribery Act 2010. The Customer in this respect refers to its "VOITH Code of Conduct", which is available on request or could be inspected under <http://www.Voith.com>. The Customer expects the Supplier to admit to the rules and principles as contained therein and supports its compliance.

## 17. General provisions

### 17.1 Assignment and subcontracting

- 17.1.1 The Customer may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the contract.
- 17.1.2 The Supplier may not assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the contract without the Customer's prior written consent.

### 17.2 Notices

- 17.2.1 Any notice or other communication given to a party under or in connection with the contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail.
- 17.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in an order; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second business day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one business day after transmission.
- 17.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### 17.3 Severance

- 17.3.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 17.3.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

17.4 A waiver of any right or remedy under the contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

17.5 A person who is not a party to the contract shall not have any rights under or in connection with it.

17.6 Except as set out in these Conditions of Purchase, any variation to the contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Customer.

17.7 The contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.