



## GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY VACU VIN B.V.

General sale and delivery conditions of Vacu Vin B.V., with its registered office in Delft, and all companies affiliated with Vacu Vin B.V. (jointly and individually referred to as: "VV").

### 1. DEFINITIONS

- 1.1. **Agreement:** an agreement concluded by the Customer with VV comprising the Order Confirmation and these General Terms and Conditions.
- 1.2. **Customer:** the party that concludes Agreements with VV or contacts VV for this purpose in any way.
- 1.3. **General Terms and Conditions:** the present general terms and conditions of sale and delivery.
- 1.4. **Offers:** any form of an offer made by or on behalf of VV to the Customer including but not limited to offers, quotations and commitments.
- 1.5. **Order Confirmation:** the written confirmation by VV to the Customer in which the order for the supply of Products and/or the provision of ancillary services by VV is laid down.
- 1.6. **Products:** all tangible matters supplied or to be supplied by VV to Customer.

### 2. APPLICABILITY

- 2.1. These General Terms and Conditions apply to all Offers, Order Confirmations issued by VV, (partial) deliveries of Products and ancillary services and to invoices from VV to Customer, to all orders placed by Customer and all agreements concluded between VV and Customer. By accepting these General Terms and Conditions, the Customer agrees that these General Terms and Conditions apply to all future Offers, orders, deliveries, invoices and agreements between VV and Customer as well.
- 2.2. Deviations from these General Terms and Conditions are only binding if and to the extent VV has agreed thereto in writing.
- 2.3. The applicability of any general terms and conditions applied by the Customer is rejected expressly.

- 2.4. If one or more provisions and/or stipulations of the General Terms and Conditions and/or the related Agreement are invalid and/or non-binding and/or in contravention of any provision of mandatory law, the General Terms and Conditions as well as the related Agreement will remain fully in effect unaltered, while as regards the provisions that are void, declared void or can be declared void VV will adopt new provisions and/or stipulations in consultation with the Customer, which will approach the purport of the provisions and/or stipulations that are void or declared void as much as possible.
- 2.5. VV reserves the right to amend these General Terms and Conditions at any time. VV will give Customer notice of any amendments and will provide Customer with the amended General Terms and Conditions, which apply 5 days after they have been provided to Customer.
- 2.6. In case of inconsistencies between the terms of any two or more of the following documents, they will take precedence over each other in the following descending order: (i) Agreement, (ii) the Offer, (iii) these General Terms and Conditions.

### **3. FORMATION AGREEMENT**

- 3.1. Any Offer of any kind is not binding on VV. VV reserves the right to reject or accept orders for any reason. All information as stated in brochures, offers and the like, is not binding on VV and cannot be regarded as an exact representation of what VV offers or is obliged to supply.
- 3.2. An Agreement is concluded at the earlier of the moment VV sends an Order Confirmation to Customer, for which the date of the Order Confirmation is decisive, and the moment VV commences performance of the Agreement.
- 3.3. The Order Confirmation accurately and fully represents the Agreement. Amendments to the Order Confirmation are only valid if approved in writing by both parties. If an Order Confirmation was not sent, then VV's invoice is regarded as the Order Confirmation, which is deemed to accurately and fully represent the Agreement.
- 3.4. Each Agreement concluded in accordance with clause 3.2 results in a separate Agreement. If however it is legally established that the legal relationship between VV and Customer is a continuing performance agreement, VV may at any time and for whatever reason terminate (in Dutch: *opzeggen*) this relationship subject to three months' notice, without being liable for any compensation, reimbursement and/or damages as a result of such termination.
- 3.5. If an Agreement has been concluded in the manner described in article 3.2 it is deemed to have commenced against the VV rates that apply at that time.

#### **4. DELIVERY AND RISK**

- 4.1. Agreed or indicated delivery times are approximations and are never strict deadlines, unless expressly agreed otherwise in writing. Therefore, exceeding an agreed delivery time does not constitute a default of VV and in such event VV will (for instance) not be liable for any damage.
- 4.2. VV will deliver Products Delivery At Place (DAP) in accordance with Incoterms® 2020, or in the manner as otherwise indicated by VV. VV has the right to engage third parties to perform its obligations under the Agreement.
- 4.3. The risk of the Products passes to Customer in accordance with the applicable incoterm.
- 4.4. Customer is obliged to take receipt of the Products at the agreed location(s) at the moment they are made available to Customer in accordance with the Agreement. If Customer fails to do so, it will be in default immediately and VV will store the Products for the risk of Customer and at Customer's costs.
- 4.5. VV has the right to suspend its obligations under the Agreement until the Customer has complied with any and all of its payment obligations vis-à-vis VV, under the Agreement or otherwise.

#### **5. PRICES AND PAYMENT**

- 5.1. All prices stated by VV are exclusive of VAT and any other taxes or duties.
- 5.2. VV has the right to adjust its prices at any time for any reason. Any increase in prices will be effective upon written notice to Customer of such change and will apply to any new orders made after the effective date of the change.
- 5.3. All invoices must be paid by Customer without discount or set-off within 14 days after the invoice date, unless agreed otherwise in writing. Customer must pay in advance upon VV's request.
- 5.4. In case of a written deviation from the payment condition described under 5.3, a surcharge on the net invoice price of 1.50% per 30 days applies, which will be stated separately on the invoice.
- 5.5. If a payment term is exceeded, Customer is in default immediately without any notice being required and Customer owes interest equal to 1% of the outstanding amount per month in which connection a part of the month is counted as one month, and Customer owes all

judicial and extrajudicial collection costs and other costs that were actually incurred with a minimum of the higher of 15% of the amount due (including any interest due) and EUR 500.

- 5.6. Any payment made by Customer will in the first place be allocated to any costs due, then to any interest and then, once these have been paid in full, to the oldest outstanding invoice, regardless of whether Customer stated otherwise.
- 5.7. Complaints concerning an invoice must be made in writing within 14 days after the invoice date. After this term has expired, Customer is deemed to have accepted the invoice. A complaint as referred to in this subparagraph does not suspend Customer's payment obligation. In the event that the complaint is justified, VV will credit the relevant amount to Customer.
- 5.8. Customer will, on first demand of VV, provide security, in a manner to be decided by VV, for the timely and correct fulfilment of its obligations.

## **6. RETENTION OF TITLE**

- 6.1. VV retains title to all Products delivered (both paid and unpaid) to Customer, until the purchase price for all these Products has been paid in full, including any interest and costs due. The retention of title also applies for claims against Customer which VV may acquire on account of Customer's failure to comply with one or more of its obligations to VV.
- 6.2. If Customer fails to comply with its obligations under the Agreement or if VV fears that Customer will fail to do so, VV has the right to take back the Products subject to the retention of title, remove them or have them removed from the Customer or third parties. Thereto Customer will fully cooperate and hereby grants VV and third parties to be designated by VV approval to enter all locations where VV's property is located and take back such Products. Customer must compensate the costs incurred by VV in this connection.
- 6.3. Customer is not permitted to sell Products subject to a retention of title or to establish any limited right on them, except in the normal operation of its business. Customer's right to sell these Products in the operation of its business will automatically expire if (i) an attachment is placed against Customer, (ii) Customer has requested a moratorium or insolvency (or bankruptcy), (iii) the insolvency (or bankruptcy) of Customer will be/has been requested or (iv) Customer enters into a payment plan with one or more of its creditors. Customer must keep these Products in such a manner that it is clear that they are VV's property.
- 6.4. If third parties claim to have rights or wish to establish rights on or attach Products subject to retention of title Customer must notify VV of this promptly and in any event within 24 hours of becoming aware of it. In that case VV is entitled to temporarily or definitively

remove the Products (or have them removed) from Customer, to take them back and/or store them (or have them stored) elsewhere.

- 6.5. In the event that VV exercises its retention of title, then VV is at all times entitled to but not obliged to sell the Products to a third party and VV will credit Customer for the value (to be determined by VV) of the Products on the open market or the net sales value, whichever of these two amounts is lower, less all the costs incurred to take back the Products and without prejudice to VV's right to compensation of the damage it sustained as a result of Customer's failure.
- 6.6. Customer must insure and keep insured the Products subject to the retention of title against all usual industry risks, such as fire, explosion, water damage and theft. The policy of this insurance must be available for inspection by VV upon first request. In case payment is made under the insurance, VV will be entitled to these insurance proceeds.

## **7. LIABILITY**

- 7.1. VV is not liable (i) for a failure against Customer, regardless of whether or not it is attributable to VV, (ii) for an unlawful act against Customer, (iii) for damage that is caused by third parties who are engaged in the performance of the Agreement or (iii) based on any other (legal) ground, except where VV's liability results from intent or the deliberate recklessness of VV's directors or of executive officers forming part of VV's management.
- 7.2. Without prejudice to clauses 7.1 or any other clause in these General Terms and Conditions, VV's cumulative liabilities and therefore VV's total liability, based on whatever legal ground, are in all cases limited to the invoice pertaining to the Products delivered, or, if that is lower, to the amount that is paid out under its liability insurance.
- 7.3. Under no circumstances is VV liable for damage that arises as a result of terms being exceeded nor for company damage, environmental damage, consequential loss and/or indirect damage, including but not limited to Customer's loss of profits and sales, lost savings, damage resulting from the loss of productivity, reputation damage, loss of goodwill and business interruption loss.

## **8. COMPLAINTS**

- 8.1. Any delivered Product conforms to the agreement if the Product's specifications provided to Customer are met. VV gives no (other) guarantee in respect of the Products. VV and Customer explicitly agree that article 7:17 of the Dutch Civil Code is not applicable.

- 8.2. Customer must examine the Products delivered by VV immediately after delivery. Any complaints due to visible defects must be submitted to VV in writing immediately and at the latest within (2) two working days after delivery. Complaints due to non-visible defects must be reported to VV in writing immediately after they are discovered but in any event within 30 days after delivery. Customer's right to invoke non-conformity and all other possible claims in respect of the Products lapse by operation of law following expiry of the abovementioned terms.
- 8.3. Under no circumstances does a complaint give Customer the right to suspend performance of any of its obligations. The fact that VV handles a complaint does not mean that VV is of the opinion that the complaint was submitted on time or correctly. It is explicitly agreed that Articles 6:89 Dutch Civil Code and 7:23 paragraph 1 Dutch Civil Code are not applicable.
- 8.4. Any complaint as referred to in clause 8.1 must be accompanied by a specification of the nature and scope of the alleged deficiencies and/or defects and supported by evidence (for example photographs). Customer must provide any and all cooperation required to examine the alleged defect. If so requested, VV or a designated representative must be provided immediate access to the Products or the Products must be sent to VV at Customer's expense for examination.
- 8.5. If a complaint is deemed to be well-founded by VV, VV will at its own discretion (i) credit Customer for the purchase price of the defective Products up to an amount to be determined by VV within reason, or (ii) replace the defective Product or part thereof, with the defective product becoming the property of VV. The remedies as mentioned under (i) and (ii) are Customer's sole and exclusive remedies for, or related to, any claim with respect to defective Products and on condition that Customer returns the defective Products carriage paid and insured at Customer's expense. However, if VV considers the complaint to be unfounded, then it is entitled to charge Customer for the costs which arose in connection with the investigation.

## 9. SUSPENSION AND DISSOLUTION

- 9.1. If Customer fails to comply with any obligation under the Agreement, these General Terms or the law, Customer is in default immediately without any notice being required and VV may – at its discretion – suspend performance of its obligations and/or dissolve (In Dutch: *ontbinden*) all or part (at VV's discretion) of the Agreement in writing without VV being obliged to pay any compensation and without prejudice to VV's other legal rights, including its right to claim damages and performance.

- 9.2. In case of a (provisional) suspension of payment, bankruptcy on the part of the Customer, cessation or liquidation of the Customer's business, all Agreements are dissolved (In Dutch: *ontbonden*) by operation of law, unless VV informs the Customer in writing within a reasonable term that it suspends compliance with (part of) the relevant Agreement(s) until payment has been secured sufficiently, without VV being liable in any way for any loss, damage, costs and interest, and without prejudice to VV's other rights including its right to claim damages and performance.
- 9.3. VV's claims against Customer become immediately due and payable in each of the cases referred to in clause 9.1 and 9.2.
- 9.4. Customer's right to dissolve (In Dutch: *ontbinden*) or suspend any Agreement in full or in part is excluded at all times.

## 10. FORCE MAJEURE

- 10.1 For the purpose of these General Terms and Conditions force majeure means any circumstance taking place independent of VV's control, even if such circumstance could have been foreseen at the time of entering into the Agreement, which prevents the performance of (part of) the Agreement, including but not limited to: veterinary diseases and epidemics, strikes by or illness on the part of VV's employees and failures of suppliers or other third parties engaged by it, governmental measures and/or prohibitions, traffic obstructions, accidents involving a means of transportation used by VV or a third party engaged by it, technical defects in these means of transportation, a lack of required permits or exemptions and theft.
- 10.2 In case a force majeure event prevents VV from performing its obligations, VV may at its own discretion, suspend the performance of its obligations under the affected agreement or dissolve (in Dutch: *ontbinden*) said Agreement in full or in part, without judicial intervention being required. Such suspension or dissolution will not create any obligation on the part of VV to pay any compensation or damages.
- 10.3 Default on the part of VV does not preclude VV's reliance on force majeure.

## 11. INTELLECTUAL PROPERTY RIGHTS

- 11.1. All (applications and priority rights for) intellectual and industrial property rights and related rights (including copyrights, design rights, trade mark rights, trade name rights, patent rights, rights on knowhow and rights in works, designs, formats, texts, images, concepts and ideas) (**IP Rights**) that are owned by VV or their licensors prior to (the

performance of) the Agreement are and will remain the full and exclusive property of VV or their licensors.

- 11.2. It is the sole responsibility of Customer to arrange for any and all licenses required for its performance of the Agreement and the use of the Products/services provided by VV. Customer will indemnify VV for any and all third party claims, costs and damages arising from a lack of said licenses.
- 11.3. In the event that VV makes use of third party IP Rights or third party materials (e.g. trademarks; and copyrighted works such as pictures, texts or identifying marks) provided by and/or on request of the Customer within the context of the performance of the Agreement, Customer guarantees to VV use of said IP Rights by VV does not infringe the IP Rights or other rights of Customer and/or third parties and Customer will indemnify VV for any and all third party claims, costs and damages in this respect.
- 11.4. Customer is not allowed without the express, written approval of VV to: (i) change and/or remove brands or identifying marks (such as bar codes) placed by or on behalf of VV on the Products and/or on the packaging thereof; and/or (ii) to change or reproduce (part of) the Products delivered to Customer.

## **12. RECALL OF PRODUCTS**

- 12.1. If one of the parties becomes aware of a defect in the Products (including the packaging), the party in question must notify the other party thereof immediately, while stating:
  - a) the nature of the defect;
  - b) the relevant Products;
  - c) all other information that could be relevant.
- 12.2. The parties must then implement in mutual consultation all measures that are necessary given the circumstances. The measures to be implemented may consist of cessation of deliveries, blocking of stocks (both at the Customer's site and at the site of the Customer's customers) and/or recall of Products. Only VV may decide which measures are implemented and the nature and implementation thereof. The Customer must render all reasonable cooperation in the implementation of these measures and guarantees that it will do so.
- 12.3. The Customer must keep all information regarding measures that were actually implemented and any measures to be implemented strictly confidential.





- 12.4. In the event VV for whatever reason recalls any Products, Customer will provide its full cooperation regarding this product recall and will at first request of VV take all actions VV deems necessary.

### **13. MISCELLANEOUS**

- 13.1. Each claim against VV, except those acknowledged by VV, expire on account of the mere expiration of a period of 12 (twelve) months after the claim arose unless provided otherwise in these General Terms and Conditions.
- 13.2. VV is entitled to assign its rights and obligations under these General Terms and Conditions to a third party. Customer hereby grants its permission to VV in advance to implement the provision of the preceding sentence and undertakes in advance to provide any further assistance that may be required for that purpose.

Customer's rights and obligations under the Agreement and these General Terms and Conditions are non-transferable.

### **14. CHOICE OF LAW AND COMPETENT COURT**

- 14.1. All Agreements, these General Terms and Conditions and any contractual or non-contractual obligations arising therefrom are governed by Dutch law. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 11 April 1980) is expressly excluded.
- 14.2. All disputes that are related to an Agreement or the performance of an Agreement and that cannot be resolved by the parties in mutual consultation must be submitted exclusively to the competent court in The Hague, the Netherlands.
- 14.3. In derogation from the provisions of article 14.2, VV has the right to determine that the dispute will be settled by means of arbitration. If this is the case, arbitration will take place in accordance with the Regulations of the Netherlands Arbitration Institute (NAI) in Rotterdam.