

General Conditions of Purchase

§ 1 Scope of Application

1. These Conditions of Purchase shall apply to all orders of VAG Armaturen GmbH (hereinafter referred to as "VAG") exclusively; VAG does not accept any general terms and conditions of the Contractor conflicting with or deviating from these Conditions of Purchase unless VAG has accepted such conditions in the individual case. They will not be accepted even if VAG has not expressly objected to them again on receipt of the delivery, if the delivery has been accepted and/or the goods have been paid for.
2. If the Supplier engages subcontractors, these must be approved beforehand by VAG, and the approval may not be unreasonably withheld. The Supplier shall inform VAG in advance if a subcontractor will perform essential parts of the order covered by the Agreement. The Contractor shall oblige his subcontractors to give their explicit agreement to these conditions or conditions of which the contractual content complies with or exceeds these conditions. The Supplier shall indemnify VAG for damage caused by subcontractors.
3. These regulations shall apply to work performance and services accordingly. In place of the acceptance of supplied products, acceptance of the work shall apply to work performance and acceptance of the service to services. Any further rights to which VAG is entitled in accordance with the legal provisions or other agreements shall remain unaffected.

§ 2 Order placement and technical documents

1. Orders must be made in writing. The Contractor is obliged to confirm or reject orders of VAG within three (3) working days in writing. Any orders which are not confirmed or rejected shall be considered accepted.
2. If drawings and electronic models are made available, in case of doubt the data on the drawing shall always prevail.

§ 3 Delivery dates, transfer of risk and framework agreements

1. The delivery or performance date specified in the purchase order is a fixed date. It represents the date the goods are to be delivered to the destination. A different delivery date is allowed with written consent of VAG only.
2. VAG is not obliged to accept partial deliveries and/or advance deliveries or advance performances, unless only insignificant parts of a total delivery are missing.
3. The Contractor is obliged to inform VAG immediately in writing, stating the reasons and the anticipated delay, if circumstances arise or become apparent to him that indicate that the agreed delivery or performance date cannot be met.
4. In case of a delay in delivery VAG shall be entitled, without prejudice to the right to claim further damages, to demand a contractual penalty of 0.5% of the delivery value per complete week of delay, but not more than 5% of the total delivery value. VAG undertakes to explain the reservation of the contractual penalty to the Contractor at the latest within ten (10) working days counting from the receipt of the delayed delivery. Further claims and rights are reserved.
5. The place of performance is the domicile of VAG. Unless otherwise agreed, CPT "domicile VAG" in accordance with the ICC – INCOTERMS® 2010 shall apply. The Contractor shall comply with the specifications of VAG for the dispatch of the products, in particular the transportation, packaging and delivery regulations in their currently applicable versions. These can be viewed at <http://VAG-Group.com>.

§ 4 Payment and payment conditions

1. The price specified in the order is binding. It includes all services and ancillary services, unless they are paid for separately, which are necessary for completion of the service to be provided, such as costs of tools, freight, customs, packaging material and its collection, transport to the place of use specified by VAG as well as all expenses for performing the erection and assembly work on a turnkey basis. Any deviations such as particular difficulties or delivery/provision of services on Sundays and public holidays which entail a higher payment must be agreed separately before order acceptance.
2. Invoices must contain the order data (contract/order number).
3. Payment shall be made by VAG within 14 days with 3% discount or 60 days net. The payment period starts on receipt of the invoice at the earliest, but not before receipt of the goods or before assembly or erection.
4. The Contractor shall not be entitled to assign claims or transfer the rights to collect claims against VAG without prior written consent of VAG.
5. Off-setting is permitted only in connection with counterclaims undisputed by VAG and claims that have been finally adjudicated.

§ 5 Material defects

1. Incoming goods are inspected by VAG for obvious defects, transport damage, integrity and identity of the goods only. VAG will give notice of such defects within a reasonable period. VAG reserves the right to carry out a more detailed incoming goods inspection. Furthermore, VAG will give notice of defects as soon as they are detected under the conditions of the ordinary course of business. To this extent, the Contractor waives the objection of late notification of defects.
2. The Contractor is obliged to carry out quality inspections during production and to perform an outgoing goods inspection, and accordingly has to check all deliveries comprehensively for their quality.
3. The Contractor shall assume the statutory warranty for defects that occur within 24 months after delivery of the goods, unless a different warranty period is agreed by individual agreements or other mandatory statutory deadlines apply. If the delivery item is intended for installation in a building, and it is incorporated in a building as an essential part, and it has caused the defectiveness of a building, a period of five (5) years shall apply. VAG shall be entitled to the statutory claims for defects without restrictions. In any case, VAG shall be entitled to demand removal of defects or delivery of a new item from the Contractor at the discretion of VAG. The right to claim damages, in particular to demand compensation in place of performance, is expressly reserved.
4. To avert an imminent risk of serious damage, VAG may, at the expense of the Contractor and without any notice or setting a deadline for the Contractor remedy the defect itself, have the defect remedied or obtain replacement, if due to the special urgency it is no longer possible to inform the Contractor of the defect and the imminent damage and to give the Contractor the opportunity to remedy the defect.
5. If VAG remedies the defect itself these costs shall be charged to the Contractor. In addition to a lump sum, the current hourly rates and, if applicable, necessary material will be charged without overhead surcharges.
6. If an epidemic failure occurs during the warranty period, the Contractor shall bear the costs of the replacement action. An epidemic failure exists if the same defect occurs in at least 33% of one type of batch of delivered products, unless the Contractor is not responsible for the defect. This does not include spare parts and wearing parts.

§ 6 Liability, product liability, property rights of third parties

1. Except in case of breach of fundamental contractual obligations, product liability claims and culpably caused damage to life, limb or health, claims for compensation - for whatever legal reason - can only be asserted if they are due to deliberate and grossly negligent acts of VAG.
2. If a claim is asserted against VAG by a third party due to a damage of the contractual products, the Contractor is obliged to indemnify VAG against these claims for compensation, insofar as VAG bears legal liability for these damages in relation to third parties. Within the framework of his liability for damages in the sense of the previous sentence, the Contractor shall also be obliged to reimburse any expenses arising from or in connection with a product recall carried out by VAG. The Contractor shall be advised of the content and scope of the recall measures to be carried out and he shall be given the opportunity to comment. Other statutory rights shall remain unaffected. The Contractor undertakes, at least for the duration of the limitation period for any claims from product liability as well as any warranty claims, to maintain a product liability insurance with an adequate lump sum coverage amount of at least € 5 million for each case of personal injury/property damage, and to provide evidence of this to VAG on request; any further claims for damages of VAG shall remain unaffected.
3. The Contractor shall indemnify VAG against any claims of third parties for infringement of property rights such as patents, copyrights or trademarks rights, unless the damage was caused through the fault of the Contractor or his assistants or vicarious agents. The Contracting Parties shall notify each other immediately if any claims are asserted against them due to the infringement of property rights.

§ 7 Industrial safety/environmental protection/Audits

1. All deliveries must comply with the laws, regulations and other provisions applicable to VAG. The Contractor is obliged to execute the order in such a way that the regulations on environmental protection, accident prevention and industrial safety (including the regulations of the trade associations) as well as the recognised regulations relating to safety and occupational medicine are observed.
2. The Contractor undertakes to provide VAG free of charge with samples of the materials/means used by him for the purpose of inspection on request of VAG. The Contractor shall bear the costs of this inspection if it turns out that the materials/means used by him do not comply with the contractual provisions. VAG reserves the right to claim compensation for damages.
3. VAG reserves the right to access all Contractor's test and manufacturing facilities with a VAG customer and, if needed, a third party inspector, for audit and final inspection reasons ("Audit"). Such Audit will be announced by VAG at least 24 hours in advance.

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§ 8 Hazardous and declarable substances

If the goods to be delivered are hazardous substances as defined by the Chemicals Act, the statutory safety data sheets in accordance with Directive 91/155/EEC must be added to the consignment on principle. Immediately after a revision of this data the Contractor shall send VAG the revised version without any need for VAG to request it.

§ 9 Confidentiality

1. The Parties undertake for an unlimited period of time to observe secrecy regarding any information classified as confidential or information that is recognisable as business or company secrets under other circumstances, and as far as not necessary for the achievement of the purpose of the supply relationship, neither to record the information nor to divulge it or utilise it in any other way. The confidentiality obligation shall not apply if the business or company secrets become public knowledge through no fault of the Contractor. The Parties shall ensure through appropriate contractual agreements with the employees and agents acting on their behalf that these refrain from any personal use, dissemination or unauthorised recording of such business and company secrets for an indefinite period of time.
2. The Contractor may only refer to his business connection with VAG in his advertising if VAG has previously agreed to this in writing.

§ 10 Manufacturing equipment (models, samples, tools, etc.)

1. As far as VAG paid for manufacturing equipment in whole or in part, the Contractor shall transfer the ownership thereof to VAG. The transfer shall be replaced by a loan arrangement which is hereby agreed and which entitles the Contractor to possession the manufacturing equipment until revoked.
2. The costs of maintenance, repair and partial renewal of the manufacturing equipment shall be borne by the Contractor.
3. This manufacturing equipment may only be modified after prior written consent of VAG: It must be kept separately and the ownership of VAG must be clearly marked on the production equipment itself and in the Contractor's business records. It may not be used for personal purposes or be made accessible to third parties. The Contractor shall insure the manufacturing equipment at his own expense at the original price against fire, mains water, storm, hail, theft and vandalism.
4. Unless otherwise agreed and unless the Contractor still has current orders to complete, VAG may reclaim the manufacturing equipment any time. The Contractor has no right of retention.

§ 11 Spare part supply

1. The Contractor undertakes to supply spare parts for a period of at least 10 years after the last shipment.
2. If individual components are discontinued by the Contractor or one of his subcontractors, VAG must be informed of this without delay. VAG shall then grant the right to a last order (last-time buying) with 3 months lead time.

§12 Integrity clause

1. VAG and the Contractor agree to take all necessary measures to prevent corruption. The Contractor shall ensure in particular through organisational measures and instruction of his staff, that in the business relationship with VAG he or his employees and subcontractors
 - a) do not commit any offences
 - b) do not demand or accept any personal gifts or other benefits that are intended to influence the decision of the employee
 - c) do not offer VAG employees any gifts or other benefits that are intended to influence the decision of the employee, and
 - d) do not incite third parties to commit the above-mentioned acts or to assist them in doing so.
2. In the above-mentioned cases, VAG shall be entitled to extraordinary termination of the Agreement without notice and to exclude the Contractor from the future award of contracts.
3. The Contractor undertakes to comply with the relevant legal provisions for dealing with employees, environmental protection and industrial safety, and to work towards reducing adverse effects of its activities on human health and the environment. Furthermore, the Supplier shall comply with the principles of the UN Global Compact Initiative. These mainly relate to the protection of international human rights, the right to collective bargaining, elimination of forced labour and child labour, elimination of discrimination in recruitment and employment, the responsibility for the environment and the prevention of corruption. Further information on the Global Compact Initiative of the UN is available at www.unglobalcompact.org.
4. The Supplier shall take appropriate measures to ensure that his subcontractors also comply with the provisions of this Section 12.

5. In the case of infringement of the provisions of this Section 12 VAG shall be entitled, without prejudice to any existing rights to further claims for damages, to claim a contractual penalty of a lump sum of 5% of the contract value.

§13 Documentation and export control

1. The Contractor shall provide VAG with all documents that are part of the delivery (where relevant, manuals, maintenance schedules, drawings, dimension and data sheet, spare parts lists, etc.) in electronic form at least in German and English.
2. The Contractor shall inform VAG of any duty to obtain a permit for (re)exports of his goods in accordance with the German, European and U.S. export and customs regulations as well as the export and customs regulations of the country of origin of his goods in his business documents. For this the Supplier shall, at least in his quotations, order confirmations and invoices provide the following information together with the relevant items:
 - a. the export list number according to Appendix AL of the German foreign trade regulations or comparable list items of applicable export lists
 - b. for U.S. goods the ECCN (Export Control Classification Number) according to the US Export Administration Regulations (EAR)
 - c. the trade origin of his goods and parts of his goods including technology and software
 - d. whether the goods were transported through the USA, made and stored in the USA or manufactured using U.S. technology
 - e. the statistical commodity code (HS code) of his goods as well as a contact person in his company for the clarification of any queries by us.
3. At the request of VAG the Supplier shall inform VAG about all further foreign trade data of the contractual products and their components and inform VAG immediately (before delivery of goods concerned by this) about all changes to the aforementioned data in writing.

§ 14 Place of performance, place of jurisdiction and applicable law, partial invalidity

1. All agreements made between the Parties for the purpose of the execution of this Agreement are set forth in this Agreement. Oral ancillary agreements do not exist. Supplements or changes to this Agreement - including this written form clause - must be made in writing.
2. The place of performance for all obligations and rights under this contractual relationship, unless specified otherwise in the order, shall be the business location of VAG.
3. The place of jurisdiction for all litigation resulting from the contractual relationship as well as its creation and its effectiveness is determined by the business location of VAG. However, VAG is also entitled to sue the Contractor at the court of his place of residence.
4. All legal relationships between the Parties shall be ruled exclusively by the law of the country in which the VAG has its domicile.
5. If any part of these Conditions of Purchase is legally invalid, the continued validity of the Agreement and these provisions shall remain unaffected.