

## **General Terms of Sale and Delivery**

### **I. Quote and conclusion of contract**

1. All quotes are subject to change unless otherwise stated in the order confirmation. Technical documentation and any information regarding weights, capacity, performance, operating costs, etc. shall only be considered binding where expressly stated.
2. VTS International GmbH (VTS) reserves all property rights and copyrights for any cost estimates, quotes and other documentation and, should such material be entrusted to the purchaser, must not be made available to third parties without the prior consent of VTS, and shall be returned to VTS upon request.
3. These provisions are deemed to be accepted by the purchaser upon the conclusion of the contract, and shall apply exclusively; any terms and conditions that conflict with or deviate from those stipulated by VTS shall be deemed invalid, unless VTS has explicitly agreed to the validity of such in writing. These terms shall also apply to all future transactions with the purchaser, even in cases where VTS delivers to the purchaser without reservation and in full knowledge of terms stipulated by the purchaser that conflict with or deviate from those of VTS.
4. A contract shall be concluded either through a timely written acceptance of a written offer from VTS or upon the written confirmation of an order by VTS. Any supplementary agreements, amendments or other agreements shall only be binding upon the written confirmation of VTS; confirmations on our pre-printed forms that do not contain handwritten signatures of names shall suffice for this written requirement.

### **II. Scope of delivery**

1. The written order confirmation from VTS shall prevail for the scope of delivery.
2. The stipulations of the German Institute of Electrical Engineers (Verband Deutscher Elektrotechniker) shall apply to any electro-technical material.
3. When using the delivered goods outside the Federal Republic of Germany, the scope of delivery for health and safety and environmental protection shall be based on the contract that has been agreed and signed. The purchaser shall be liable to comply with any legal or other regulations at the site of use. All statutory levies (taxes, fees, duties, etc.), arising from or in connection with the conclusion or execution of the contract outside the Federal Republic of Germany shall be borne by the purchaser.
4. Should any provisions be agreed that are standard for the type of performance, the Incoterms of the International Chamber of Commerce in Paris on the day of the conclusion of the contract shall be valid for the interpretation of such provisions.

### III. Price

Unless otherwise agreed, prices are agreed ex works, excluding freight and packaging, plus the applicable rate of VAT which shall be indicated separately on the invoice on the day of billing. No packaging may be returned to VTS unless it may be recycled.

### IV. Payment

1. Payments shall be made on the agreed date, free of charge and without deductions, to the bank indicated by VTS. The determining factor for payment shall be the date of receipt of the payment by VTS. In the event of a delay in payment, irrespective of any statutory rights, an annual interest rate of 9 percentage points above the prevailing base rate of the ECB shall be payable. VAT shall be due for payment on the day of billing, and for taxable prepayments, pro rata on the agreed payment dates.
2. The purchaser may only offset payments or assert a right of retention against any claims from VTS if the counterclaim of the purchaser is undisputed or has been established in law.
3. If and insofar as full or partial payment of the purchase price for items is deferred by VTS, the respective residual claim shall be immediately due for VTS if such items are resold by the purchaser. Should the purchaser fail to comply with his obligations in terms of payment or retention of title, or should his financial circumstances experience a significant downturn, or should he discontinue his payments, the full residual balance shall be immediately due and VTS shall be entitled to refuse the fulfilment of its services, to demand the return of its services, to make further deliveries contingent on advance payments or security payments, to claim damages owing to non-fulfilment or to withdraw from the contract.

### V. Retention of title

1. The delivered goods shall remain the property of VTS until the full settlement of all claims arising from the business relationship between VTS and the purchaser. Should the total value of the existing collateral secured for VTS exceed the secured claim by more than 50%, VTS shall be obliged to release secured collateral of its choice if requested to do so by the purchaser. Should the legislation in a particular country not permit retention of title, but allows similar rights to be reserved, VTS shall be entitled to exercise all rights of this type. The purchaser shall, upon request, take all the necessary measures at his own cost to enable such rights to the delivered goods to take effect and to uphold such rights.
  - a. Any processing or usage of the delivered goods under retention of title and any combination with external items by the purchaser or a third party shall be carried out with no liability arising for VTS. VTS shall be considered the co-owner of any newly created items in accordance with the value of the delivered goods.
  - b. The purchaser shall assign to VTS any receivables from the resale of the delivered goods to secure the latter's claims, and up to the amount of such claims. The purchaser is not authorised to assign such receivables to a third party. The purchaser shall be authorised to collect any

receivables due, while VTS reserves the right to recover such receivables. The purchaser shall transfer to VTS any information or documentation required to collect such receivables.

- c. In the event of the retrieval or reimbursement of services following a breach of contract on the part of the purchaser, in particular any delay in payment, VTS shall, without proof of loss, be entitled to a depreciation of 25% for the first six months of use of such delivered goods, and a further 10% for each subsequent six-month period, to be borne by the purchaser. The purchaser reserves the right to demonstrate lower losses or a lower percentage of depreciation.
2. The purchaser shall immediately notify VTS in the event of a seizure of goods or other impairments of owner interests, in particular through third-party claims, and shall initiate the relevant precautionary measures at his own cost. The purchaser shall make any third parties aware that the delivered goods are the property of VTS.
3. The purchaser shall always ensure the safe and proper storage of any items owned or co-owned by VTS and shall insure such items against theft, fire and any other material damage at his own cost, provided that VTS is entitled to the rights under the insurance contract. VTS reserves the right to request that any items owned by VTS be returned should the fulfilment of any obligations be jeopardised by the purchaser, or should the purchaser culpably violate an obligation to which it is bound. No right of retention may be asserted against such legal right to recovery.  
The purchaser shall reimburse all damages and costs, including any court and legal fees, incurred by VTS owing to a culpable breach of the purchaser's obligations or owing to intervention measures to prevent access by third parties.

## VI. Delivery time

1. The delivery period shall commence in accordance with the agreement, but not prior to the clarification by the purchaser of any documentation and permits required. The delivery period is deemed to be fulfilled when a notice of the readiness for despatch has been sent to the purchaser before the expiry thereof.
2. The delivery date shall be postponed, even should a delay in delivery occur, in the event of strikes and lockouts, in cases of force majeure and unforeseen events that are beyond the control of VTS; e.g. disruptions in operations, delays in supply, defective manufacture or supply by subcontractors or other delays for which VTS is not liable. In severe cases, VTS shall notify the purchaser of the start and anticipated duration of such events.

The delivery date shall also be postponed should the purchaser default on payment or any other obligations, such postponement being equivalent to the duration of such arrears, and should the technical and commercial issues fail to be resolved within a reasonable period.

3. Should any amendment to the order be agreed, VTS reserves the right to determine a new delivery date.
4. Even if a delay occurs that is demonstrable for reasons other than in para 2, VTS shall not essentially be liable to pay contractual penalties, unless such have been explicitly agreed on a case-by-case basis.

5. In the event of a delay in delivery for which VTS is responsible, the purchaser undertakes to set a reasonable period of grace for the fulfilment of the delivery before the purchaser may withdraw from the contract or claim damages. The period of grace must be at least 30 working days and, should no successful outcome arise upon expiry of such term, the purchaser's claim for fulfilment shall be excluded. Should any damages arise from such delay, evidence of such must be produced by the purchaser and shall be limited to 5% of the order value provided the delay was not caused through malicious intent or gross negligence on the part of VTS.
6. Should the purchaser default on acceptance or culpably breach any obligation to cooperate, VTS shall be entitled to claim any damages arising from such, including any additional expenses. This includes in particular any costs arising from storage, and should the goods be stored at the VTS premises, damages shall be calculated based on a monthly rate of at least 0.5% of the value of the contract. The right to further claims remains reserved.

#### VII. Transfer of risk

1. Risk is deemed to be transferred to the purchaser upon delivery to the company responsible for despatch (e.g. courier, freight forwarder), but no later than the time at which the consignment leaves the supplier's premises. Should despatch be delayed through no fault of VTS, the risk shall be transferred to the purchaser upon notification of readiness for despatch.

#### VIII. Fulfilment

1. The obligation to deliver the goods shall be deemed to be fulfilled when the risk in accordance with Article VII is transferred to the purchaser. Partial deliveries are permitted.
2. From the date of fulfilment onwards, VTS shall be liable under these conditions in accordance with the provisions of Art. IX (liability for defects in the delivery).
3. The purchaser shall accept the delivered goods, even if they are slightly defective, regardless of the rights pursuant to Art. X.

#### IX. Liability for defects in the delivery

1. VTS shall be liable for compliance with the properties and features that have been explicitly guaranteed and for ensuring that the design, manufacture and materials are free from defects such that, should parts of the delivery be unusable as a result of such defect or their usefulness be substantially impaired, VTS shall, at its discretion, either remedy such defects free of charge or ensure that replacement goods are delivered from the supplier. Any replacement parts shall become the property of VTS.

Any insignificant or reasonable deviations in the dimensions and designs, in particular for re-orders, shall not form grounds for objection unless absolute compliance has been expressly agreed. Technical improvements and any essential technical modifications shall also be deemed to comply with the contract, provided they do not constitute a deterioration of the serviceability of the goods.

VTS shall bear any direct costs arising from the repair or replacement of goods should the claim prove to be justified. However, VTS shall require written confirmation of such for any payment to be made. In the event of an unjustified claim, the purchaser shall bear all the costs arising from any repairs or replacement deliveries.

2. A) Regardless of the notice of defects, the period for the submission of warranty claims for machinery shall start on the date the delivered goods were commissioned and, for other items, on the date of delivery or of the transfer of risk, and shall end 12 months later, respectively 24 months for Centac air coolers. In any case, it shall not extend beyond 18 months, respectively 30 months, after the notification of readiness for despatch.  
  
B) The purchaser is obliged to follow the manufacturer's installation instructions / OEM specifications, and VTS shall not be liable for defects arising from the non-compliance with such instructions / specifications.  
  
C) The warranty period for defects shall be 6 months for replacement machines, remedial work and replacement parts that are built in to such machines. Its maximum validity shall be until the expiry of the original limitation period for exercising warranty rights for delivered goods.
3. Should any remedial work be required, the purchaser must allow the necessary time and opportunity for such, provide the relevant personnel, equipment and operating facilities at his own cost, carry out any additional work and perform any work that goes beyond the original scope of the contract at his own cost. Additional costs for work outside normal working hours shall be borne by the purchaser.
4. The warranty for defects shall be excluded for natural wear and tear or for parts that are subject to premature deterioration and, in addition, in the event of improper storage, handling or use, incorrect assembly or operation, excessive strain or load, unsuitable operating facilities, defective construction works or foundations, unsuitable plots, or chemical, electrochemical or electrical influences. This also applies to any conditions existing after the transfer of risk for which VTS is not liable.
5. In cases where the delivery goods are electrically operated, VTS is not liable for the reverse effects of the start-up current on the power distributor's electricity network or on electrical equipment or machines connected to the electricity network.
6. The purchase may only assert a claim against VTS for defects if:
  - a. VTS is immediately notified in writing of a defect that should be remedied under warranty;
  - b. no remedial work has been carried out without the approval of VTS;
  - c. no replacement parts of external origin have been installed.
7. The purchaser may only terminate the contract owing to defects if remedial work ultimately failed to rectify such defects. This shall apply if two attempts at remedial work were unsuccessful. The purchaser's right to a reduction in price is excluded.

8. The foregoing provisions in this paragraph shall not apply to the sale of used goods, which are supplied with the exclusion of warranty claims. This shall not apply to used goods that were reconditioned by VTS. In this case, VTS shall be liable for defects for a period of 6 months. The purchaser shall only be entitled to demand replacement of the defective goods in a similar condition or the correction of the defect, at the discretion of VTS.
9. Should VTS make itself available to the purchaser over and above its statutory obligations for the purpose of providing information on the use of its products, it shall only be liable in accordance with Art. XIV if a special fee has been agreed for such provision.
10. However, the abovementioned disclaimer shall not apply in the event of malicious intent or the gross negligence of VTS or its representatives, or in the event of injury to life, body and health.

X. Withdrawal/non-acceptance

1. If and insofar as VTS withdraws any of the machines and/or devices sold, VTS shall be obliged to issue a credit note for the purchase price. Upon issue of this credit note, provided such withdrawal is not based on the legitimate assertion of a claim owing to a defect, the amount of the credit note may be reduced to reflect in particular loss of profits amounting to at least 20% of the invoice amount, the cost of return transport, costs incurred to restore the goods to a useable condition, depreciation through use and age (changes to models in particular) and costs for an independent expert to calculate the amounts to be deducted. The purchaser reserves the right to prove a lower amount of damage in individual cases.
2. Any transport and insurance costs that arise shall be borne by the purchaser. The return transport shall be carried out at the purchaser's risk. VTS shall not be liable for any damage that occurs during the return transport, including during the loading and unloading of goods. The purchaser is obliged to prove that any damage identified did not occur during transportation, loading or unloading, or during the storage period up to the time when such damage was detected.
3. Should the purchaser wish to withdraw from the contract before the fulfilment of such, VTS may demand compensation for any precautionary measures taken or expenses incurred, and for any loss in profits. The corresponding compensation claim shall be fixed at a minimum of 30% of the order value based on the typical expenses incurred after the date of withdrawal, unless the purchaser proves a lower level of damages or VTS proves a higher level of damages.
4. The regulations of § 346 BGB (the German Civil Code) shall remain unaffected.

XI. Purchaser's right of revocation

1. The purchaser may only withdraw from the contract by means of a written notification if
  - a. It has become impossible for VTS to perform the contract. In the event of a partial inability to fulfil the contract, the right of revocation shall only exist if a partial delivery were to be demonstrated to be of no benefit to the purchaser; moreover, this may also incur an appropriate reduction in the purchase price. Should such inability occur during the delay in acceptance or if such inability is the responsibility of the purchaser, the purchaser shall be obliged to provide

some financial compensation. Should the inability be the fault of neither contracting party, VTS shall be entitled to demand a corresponding portion of the remuneration for the work performed.

- b. If the purchaser has notified VTS of an appropriate grace period in writing, with the express declaration that the purchaser will withdraw from the contract after the fruitless expiry of the deadline and will prove that his benefit from the delivered goods has been substantially impaired as a result of the delay or defect.
2. Should the purchaser effectively withdraw from the purchase contract, VTS may demand compensation for any precautionary measures taken or expenses incurred and for any loss in profits. The corresponding compensation claim shall be fixed at a minimum of 20% of the order value based on the typical expenses incurred after the date of withdrawal.

## XII. VTS's right of revocation

VTS may withdraw from the contract in whole or in part should unforeseen events considerably change the commercial importance or the content of the performance, or substantially affect the operation of VTS, or should a significant change occur in the economic circumstances of the purchaser. This shall also apply if an extension of the delivery date has been agreed with the purchaser. Should VTS wish to exercise its right of revocation, it shall immediately inform the purchaser of such wish having become aware of the consequences of the event, and the purchaser shall have no right to claim for damages.

## XIII. Liability

1. VTS shall be liable for the full amount of damages in the event of its own wilful conduct or gross negligence and the wilful conduct or gross negligence of its executives. VTS shall remain liable for the full amount of damages for non-compliance with warranties, for the acceptance of a procurement risk, in the event of culpable injury to life, body and health, and as part of its liability under the German Product Liability Act and the German General Act on Equal Treatment.
2. VTS shall be liable in the event of any culpable breach of contract, i.e. obligations that enable the proper execution of the contract and on the fulfilment of which the purchaser therefore relies and may rely, and in the event of gross negligence on the part of simple vicarious agents. The liability of VTS as mentioned in the above paragraph shall be limited to the amount of typically foreseeable damage.
3. In the event of liability for a major breach of contractual obligations pursuant to the previous paragraph, the liability for indirect or consequential damages, such as loss of profits, loss of production, loss of business opportunities shall be excluded.
4. Any further liability is expressly excluded. Insofar as the liability is excluded or limited, this shall also apply to the personal liability of the employees, workers, colleagues, representatives and agents of VTS.

XIV. Non-transferability of the contractual rights

The purchaser may not transfer or pledge his contractual rights to third parties without the express consent of VTS.

XV. Place of performance and jurisdiction

1. The place of performance for all claims arising from the contract shall be Simmerath or at the place indicated on the order confirmation.
2. The exclusive jurisdiction for all disputes arising from this contractual relationship, including bills of exchange, cheques or documentation, shall be Aachen. VTS may also file an action at the registered office of the purchaser.

XVI. Applicable law and validity of the contract

1. The contractual relationships shall be governed by German law excluding the application of the UN Convention on Contracts for the International Sale of Goods (CISG).
2. Should a provision of this contract become invalid, the validity of the remaining provisions shall remain unaffected, provided such invalidity does not affect the essential elements of the contract. Any invalid clauses shall be replaced by the lawful provisions that come closest to the intention of the invalid provision.
3. We hereby notify you that we store your personal data in accordance with §26 of the Federal Data Protection Act.

The validity of the German version of these General Terms and Conditions shall prevail.