

# General Business Terms of Purchase ("GTP") of VDL ETG Switzerland AG ("VDL ETG")



## 1. Scope of Application

- 1.1 These GTP set forth the conditions governing the purchase of products by VDL ETG from the Supplier and deliveries made by the Supplier to VDL ETG.
- 1.2 Contrary or inconsistent terms and conditions of the Supplier shall not be deemed accepted by VDL ETG, unless VDL ETG shall have agreed thereto in writing.
- 1.3 These GTP shall apply (and not the terms and conditions of the Supplier) even in cases where VDL ETG unreservedly accepts deliveries from the Supplier knowing that the Supplier has contrary or inconsistent terms and conditions.
- 1.4 The scope of delivery, specifications, objectives, delivery dates and the prices for deliveries pursuant hereto shall be set forth in separate orders. Upon Supplier's accepting an order a delivery agreement shall come into effect with respect to the items covered by such order. These GTP constitute an integral part of each order and delivery agreement.

## 2. Offer

- 2.1 By the tender invitation the Supplier acting as specialist is asked to submit an offer at no charge. The Supplier shall focus the offer on the specifications and objectives of VDL ETG and explicitly point out any deviations; the Supplier, therefore, acknowledges his duty to inform. If the Supplier does not limit the validity of his offer it will be considered to be binding for 90 days.

## 3. Order

- 3.1 To be effective, orders must be in writing. Acceptance of an order by the Supplier shall be deemed effective if it is in writing or if the Supplier does not object in writing to the order within 48 hours after the Supplier receives the order.
- 3.2 If the conclusion of a delivery agreement is made dependent on an order confirmation, VDL ETG shall only be bound if this confirmation of order does not deviate from the content of the order.
- 3.3 The scope of delivery includes, and the Supplier shall not be deemed to have satisfied its delivery obligations unless and until it delivers to VDL ETG, everything required for the proper installation, operation and functioning of the product, regardless of whether mentioned or described in the specifications set forth in or related to the order.
- 3.4 Orders must be processed in compliance with ISO-9001/ISO-14001. Further quality agreements will be set out on an order-specific basis. The following documents, records, data and specifications, in particular, are authoritative in determining quality: order, drawings, standard sheets (VDL ETG standards and indications and data on drawings), specifications.

- 3.5 Parts and modules identified by VDL ETG in writing as proprietary shall not be made available to third parties without the written consent of VDL ETG.

## 4. Prices and Terms of Delivery

- 4.1 The prices of the Supplier are considered to be fixed prices in the currency indicated on the order, DDP, delivered, duty-paid, Trübbach, Switzerland. (INCOTERMS 2010). Other terms of delivery shall be as set forth in the order or as otherwise set forth in writing by the parties.
- 4.2 The Supplier shall be liable for any damages arising during transport due to inadequate packing.
- 4.3 A delivery note with all order specific indications must be enclosed with each delivery. Part and rest deliveries shall be designated as such on all shipping documents and invoices.
- 4.4 At its own expense, the Supplier shall add all required EU-conformity ("CE-symbol") or EU manufacturer declaration to each delivery. The Supplier domiciled in a country with customs convention concerning tariff preference with Switzerland shall cite on all invoices the declaration of origin in accordance with the respective free trade agreement.

## 5. Terms of Payment

- 5.1 The order number, the exact trade mark/goods' designation as well as the number of the drawing or the part must be indicated on all correspondence, confirmations, delivery notes, invoices etc.
- 5.2 Two copies of a separate invoice shall be executed for each order as well as for each delivery.
- 5.3 Payment for each delivery shall be made 60 days net by VDL ETG based on invoiced date. Other terms of payment shall be as set forth in the order or as otherwise agreed upon by the parties in writing.

## 6. Dates of Delivery and Late Delivery

- 6.1 The delivery is due at the destination on the date(s) stipulated in the order. If a fixed calendar delivery date has been agreed upon, late delivery puts Supplier automatically in default, unless the Supplier communicates his delivery difficulties in due time and the parties agree on a different solution.
- 6.2 VDL ETG is entitled to claim as compensation for damages resulting from delay for each whole or partial week by which the delivery date is exceeded a flat rate of one percent of the net sale price, up to a maximum amount of 5% of the delivery's net sales price. The requirement of prior notice, insofar as a delivery date is not determined by the calendar, remains unaffected by this provision. If the Supplier is late with only part of the delivery, the penalty for default shall be calculated on the price of the Supplier's total performance that is affected by the late partial delivery. The foregoing provisions of this paragraph 6.2 are in addition to and not exclusive of any other remedy that may be available to VDL ETG in the event the Supplier fails to deliver an item in accordance with the terms of a delivery agreement. Nothing herein shall be deemed to limit any such other remedy that may be available to VDL ETG, nor shall VDL ETG's enforcement of any other rights it may have be deemed or construed to affect or waive any of its rights hereunder. The Supplier's payment of damages required by this paragraph 6.2 does not release the Supplier from its duty to fulfill the delivery according to the agreement.
- 6.3 The Supplier may plead omission of essential services to be performed by VDL ETG only if he has requested these on time.
- 6.4 Partial or early deliveries are admissible only if they have been agreed upon.
- 6.5 If the Supplier is in default with his delivery and if in transactions without a fixed calendar delivery date the Supplier remains in default with his delivery after a given reasonable grace period, VDL ETG shall thereafter be entitled to refuse acceptance of the delivery, to terminate the related delivery agreement and/or to seek damages for non-fulfillment of the delivery obligation. The amount of any penalty for default according to paragraph 6.2 above shall be credited against any damages to which VDL ETG may be entitled under this paragraph 6.5.
- 6.6 If it becomes evident already prior to the delivery date that the Supplier will not be able to meet the agreed delivery date, VDL ETG may terminate the delivery agreement and waive delivery.
- 6.7 The delivery agreement may also be terminated if in the course of manufacture it becomes evident that the object to be delivered will not be suitable for the purpose intended.

## 7. Warranty, Liability

- 7.1 The Supplier expressly warrants the guaranteed product features and the specifications specified in the delivery agreements as well as that the products it delivers are free of defects which will reduce their value or fitness for normal use as well as their useful life under known conditions of use. In addition to the warranty of product features in the delivery agreements and the terms thereof notwithstanding, the Supplier warrants that each product delivered pursuant to the delivery agreements (i) has been tested and controlled and meets all industry standards and all legal requirements under existing laws, regulations and directives relating to design, safety, fire and environmental protection and (ii) has been designed in a manner not to endanger life and health if the product is used as directed.
- 7.2 VDL ETG is not obliged to inspect any product for defects or notify Supplier of defects in order to maintain VDL ETG's warranty claims, except for warranty claims in respect of obvious defects.
- 7.3 Contrary to the legal prescriptions the warranty in respect of each product delivered by the Supplier to VDL ETG shall survive for a period of 24 months from the date the product is delivered to VDL ETG. The Supplier at its expense and free of charge to VDL ETG, shall promptly, upon request by VDL ETG, repair all defects (which shall also include the not achieved guaranteed data and the absence of any guaranteed product feature) of which VDL ETG gives the Supplier notice during the warranty period. In addition, VDL ETG shall be entitled to all legally guaranteed warranty claims. Notwithstanding the foregoing, VDL ETG may, at its election and as an alternative to the Supplier's repairing a defective item, require the Supplier to replace the defective item with a non-defective item. In the exercise of this right of discretion, VDL ETG shall consider in good faith whether the Supplier is capable of making repairs due to the nature of its business operation. In either case, the Supplier shall bear all expenses arising from the repair or replacement of the defective item.
- 7.4 For replacement deliveries and repairs the Supplier grants a warranty of 24 months.
- 7.5 VDL ETG shall be entitled to cancel a sale or to get a sales price reduction on account of a material defect only if (i) the Supplier fails to replace or repair a defective item by such reasonable deadline as may be set by VDL ETG in its discretion or if (ii) the Supplier declines to replace or repair a defective item.
- 7.6 VDL ETG shall be entitled to have a defective item repaired by a third party and to charge the costs thereof to the Supplier without giving the Supplier an opportunity to repair the defective item if, due to special urgency or other valid business reasons, VDL ETG reasonably believes the Supplier is incapable of repairing the item to VDL ETG's requirements. In this case, VDL ETG shall immediately notify the Supplier of the defect upon VDL ETG's discovery thereof.
- 7.7 The Supplier shall be liable for all damages, excluding consequential damages, caused by the breach of any warranty applicable to a product delivered to VDL ETG pursuant hereto.
- 7.8 The Supplier shall indemnify and hold VDL ETG harmless against any loss or claim, including the cost of defending against any such claim, against VDL ETG arising from any act or omission of the Supplier or any breach of warranty by the Supplier that causes or is alleged to have caused personal injury or damages to the property of any third party.
- 7.9 The Supplier is liable for his subcontractors to the same degree as for his own performance.

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- 7.6 VDL ETG shall be entitled to have a defective item repaired by a third party and to charge the costs thereof to the Supplier without giving the Supplier an opportunity to repair the defective item if, due to special urgency or other valid business reasons, VDL ETG reasonably believes the Supplier is incapable of repairing the item to VDL ETG's requirements. In this case, VDL ETG shall immediately notify the Supplier of the defect upon VDL ETG's discovery thereof.

- 7.7 The Supplier shall be liable for all damages, excluding consequential damages, caused by the breach of any warranty applicable to a product delivered to VDL ETG pursuant hereto.

- 7.8 The Supplier shall indemnify and hold VDL ETG harmless against any loss or claim, including the cost of defending against any such claim, against VDL ETG arising from any act or omission of the Supplier or any breach of warranty by the Supplier that causes or is alleged to have caused personal injury or damages to the property of any third party.

- 7.9 The Supplier is liable for his subcontractors to the same degree as for his own performance.

## 8. Product Liability, Indemnification, Insurance Coverage

- 8.1 The Supplier shall indemnify and hold VDL ETG harmless against any third party claim for damages against VDL ETG insofar as a product delivered by the Supplier to VDL ETG was the cause of the damage or the cause of the damage was within the Supplier's control.
- 8.2 The Supplier shall also reimburse VDL ETG for all expenses arising in connection with any recall measure taken by VDL ETG to repair or replace any defective product if either (i) the defect was caused by a defective item delivered by the Supplier to VDL ETG or (ii) prevention of the defect was otherwise within the Supplier's control. To the extent it may reasonably be expected to do so, VDL ETG will notify the Supplier of recall measures to be taken.
- 8.3 The Supplier shall obtain and maintain in full force and effect during the term of the related delivery agreement and for at least five years following the termination thereof, a commercial general liability and product liability insurance to cover all claims hereunder or otherwise related to any product delivered or required to be delivered under any delivery agreement, such insurance shall provide coverage of at least CHF 5'000'000.-- per damage event. This shall be confirmed by the insurer to VDL ETG at least once per year.

## 9. Third Parties' Intellectual Property Rights

- 9.1 The Supplier represents and warrants to VDL ETG that the delivery to, and use by, VDL ETG of the Supplier's products in accordance with the terms of these GTP and any delivery agreement concluded hereunder will not infringe any patent, trademark, trade secret or other intellectual property rights of any third party. In case any such third party claim of infringement is made against VDL ETG, the Supplier shall indemnify and hold VDL ETG harmless against such claim.

## 10. Technical Documents and Operating Manuals

- 10.1 To the extent necessary, VDL ETG will provide Supplier with all technical documents that it requires for performance of the contracted work.
- 10.2 Before work on the product is started the Supplier shall submit to VDL ETG, on request, a set of engineering drawings for approval. Approval by VDL ETG does not relieve the Supplier from ensuring that the product can be built and that it will function according to specifications.
- 10.3 All documents prepared by Supplier on the basis of VDL ETG's specifications shall be provided to VDL ETG in a set of drawings that can be photocopied or microfilmed and/or in the form of CAD data.
- 10.4 Furthermore, with the delivery of the product VDL ETG shall be provided with the final engineering drawings, maintenance instructions and operating manuals as well as the spare parts list for proper maintenance in electronic form (PDF file) in English and German free of charge.
- 10.5 VDL ETG is entitled to copy and publish all documents provided by Supplier at its own discretion.

## 11. Service and Repairs

- 11.1 The Supplier shall provide a repair and maintenance service staffed by qualified technical experts for each product delivered to VDL ETG for a period of at least 10 years after delivery of the product to VDL ETG.
- 11.2 The Supplier warrants the availability of original spare parts for each product delivered to VDL ETG under any delivery agreement for a period of at least 10 years after delivery of the product to VDL ETG. In case Supplier is unable to provide original spare parts to VDL ETG during the period stated above Supplier is obliged to notify VDL ETG thereof in writing 6 months in advance and furthermore to deliver to VDL ETG spare parts conforming to the original spare parts with respect to form, fit and function.
- 11.3 All repair and maintenance work shall be performed by the Supplier to industry standards.

## 12. Obsolete Products

- 12.1 If Supplier intends to cease manufacturing, offering, selling and/or delivering products Supplier is obligated to notify VDL ETG 6 months in advance in writing and to give VDL ETG the possibility to place a last call order with respect to such products.

- 12.2 In such case SUPPLIER shall make available to VDL ETG any and all documents necessary and shall furthermore and free of charge grant to VDL ETG any and all rights and licenses necessary to manufacture the respective products or to have such products manufactured by third parties.

## 13. Inspection Right

- 13.1 VDL ETG has the right to inspect the work in progress; however, this does in no way change or diminish the Supplier's obligation to fulfill his contractual obligations.

## 14. Assembly and Installation

- 14.1 If the Supplier also undertakes the assembly and installation, these works shall be included in the delivery price unless separate payment has been agreed upon.

## 15. Secrecy and Product-related Exclusivity Agreement

- 15.1 The Supplier shall not use for any purpose not authorized by the delivery agreements concluded hereunder or disclose to any third party any trade or manufacturing secret or customer data of VDL ETG. In particular, the Supplier shall not use any manufacturing know-how made available to the Supplier by VDL ETG in any form to manufacture or have manufactured for other customers products similar to or comparable with any product subject to a delivery agreement entered into hereunder. The Supplier shall cause each of its employees and subcontractors to agree by appropriate contractual measures to be bound by the foregoing provisions of this paragraph 15.1.
- 15.2 Paragraph 15.1 shall survive the termination of the delivery agreement concluded hereunder. Paragraph 15.1 shall not apply to manufacturing know-how of VDL ETG that is embodied in figures, drawings, calculations or other documents that are publicly disclosed by VDL ETG.

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## 16. Applicable Law, Place of Performance

- 16.1 These GTP and the individual delivery agreements concluded hereunder shall be construed in accordance with, and governed by the laws of Switzerland, with exclusion of the UN Convention on Contracts for the International Sale of Goods (Vienna Convention) and without regard to any applicable principles of conflicts of laws. The regulations of Swiss law shall be of subsidiary application to the express provisions of these GTP and the delivery agreements concluded hereunder.
- 16.2 Unless otherwise provided for in writing, place of performance shall be the production site of VDL ETG at Trübbach, Switzerland.

## 17. Miscellaneous

- 17.1 All modifications and supplements to these GTP (including, without limitation, this paragraph 17.1), all delivery agreements concluded hereunder and all modifications and supplements to such delivery agreements shall only be effective if embodied in a written instrument signed by each of the parties hereto.
- 17.2 Neither party may assign or transfer any of its rights and duties under these GTP or any delivery agreement concluded hereunder without the prior written consent of the other party.
- 17.3 In the event any term or provision of these GTP shall for any reason be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof. Such illegal, invalid or unenforceable provision shall be replaced by another valid, legal and enforceable provision in form and substance suitable to ensure the overall business intent of the parties hereto.

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