

## **GENERAL TERMS AND CONDITIONS OF Vereniging VACO – Corporate**

### **Article 1 - Definitions/General**

- a) In the General Terms and Conditions of Vereniging VACO, the terms below shall have the following meanings:
  - VACO Supplier: any company recognised by Vereniging VACO that refers to the General Terms and Conditions of Vereniging VACO in its offers and contracts and applies them to its transactions;
  - Customer: the party (not being a consumer) to which the VACO Supplier has sent an offer and/or that has engaged a VACO Supplier to provide services or deliver goods.
- b) The terms and conditions shall apply to the formation, substance and performance of all contracts concluded between a VACO Supplier and the Customer for the delivery of goods and/or the provision of services by the VACO Supplier.
- c) Any purchase or other conditions of the Customer shall not apply, unless this has been expressly agreed in writing.

### **Article 2 - Quotes and Contract**

- a) All offers and quotes from the VACO Supplier shall be free of obligation.
- b) The prices quoted by the VACO Supplier shall apply to delivery ex warehouse or place of business of the VACO Supplier, unless otherwise agreed in writing. The prices quoted shall be exclusive of Value Added Tax and any other government levies, unless otherwise agreed in writing. Additional costs of packaging, etc., are not included in the quote and shall be charged separately by the VACO Supplier.
- c) Unless a purchase is paid for in cash, a contract between the VACO Supplier and a Customer shall not be concluded until the VACO Supplier has acknowledged the order in writing or has started with its delivery.
- d) Changes in prices due to, for example, changes in factory or importer's prices and/or exchange rates may be incorporated into the selling price. If any changes in prices occur within three months of conclusion of the contract, the Customer shall be entitled to dissolve the contract within one week of receipt of the notice of change. Any changes in the prices occurring over a delivery period exceeding three months shall not entitle the Customer to dissolve the contract.
- e) Any statutory changes in prices, such as taxes and duties levied by the government, shall not entitle the Customer to dissolve the contract.

### **Article 3 - Delivery and Delivery Period**

- a) The delivery dates and other dates stated by the VACO Supplier shall always be indicative and can under no circumstances be regarded as deadlines within the meaning of Section 6:83, subsection a of the Netherlands Civil Code, unless expressly otherwise agreed in writing. If the expected delivery date is exceeded, the Customer may give the VACO Supplier notice of default by registered letter, affording the VACO Supplier a reasonable period of time within which to fulfil its obligation(s) without assuming liability for damages. A reasonable period of time shall be a period of two months after expiry of the delivery date stated.
- b) Goods and/or services shall be deemed to have been provided as soon as the goods are ready to be collected from or delivered by the VACO Supplier and/or the activities to be performed as part of the services have been completed.
- c) The Customer shall be obligated to accept any deliveries made earlier than specified by the VACO Supplier. The VACO Supplier may effect partial deliveries and invoice the Customer separately therefor. Partial deliveries cannot be undone if it appears afterwards that the order cannot be delivered in full.

### **Article 4 - Force Majeure**

- a) In addition to its definitions in law and case law, force majeure shall be understood to mean any external causes beyond the control of the VACO Supplier that prevent the regular performance of an obligation, irrespective of whether such a cause could have been foreseen at the time the contract was concluded. Such causes shall include strikes, a general lack of raw materials, unforeseeable delays at suppliers or other third parties that the VACO Supplier depends on, government measures, general power supply failures and general transport problems.

- b) The VACO Supplier may also invoke force majeure if the circumstance preventing (continued) performance commences after the VACO Supplier should have fulfilled its obligation.
- c) In the event of prolonged force majeure, the VACO Supplier shall be entitled to declare the contract dissolved in writing without assuming liability for damages.
- d) During the period of temporary force majeure, the VACO Supplier's delivery and other obligations shall be suspended without judicial intervention and the delivery period shall be extended by the same period. If the period of force majeure continues for more than three months, either party shall be entitled to dissolve the contract with due regard for the provisions set forth in Article 4e), without assuming liability to pay the other party damages.
- e) If the VACO Supplier has already fulfilled part of its obligations or is only able to perform its obligations partially at the time the force majeure commences, the VACO Supplier may invoice separately for the portion already delivered or deliver the relevant portion and send an invoice for it. The preceding provision shall not apply if the portion already delivered or yet to be delivered has no independent value.

#### **Article 5 - Risk, Retention of Title and Right of Retention**

- a) The Customer shall bear the risk of any and all damage sustained or caused by the goods and/or services provided as from the moment of delivery. The party responsible for organising transport shall bear said risk as from the moment at which the transport commences, and shall be obligated to take out adequate insurance for said risk.
- b) The Customer shall be obligated to insure the goods delivered against the customary risks under standard conditions with a reputable insurance company, and to keep them so insured from the moment of delivery until the time of full payment.
- c) All goods delivered and yet to be delivered under a specific contract shall remain the exclusive property of the VACO Supplier until the Customer has paid all sums it owes or will owe the VACO Supplier, including interest and costs as referred to in Section 3:92, subsection 2 of the Netherlands Civil Code. This means that the paid goods shall not become the Customer's property until the Customer has settled all sums due to the VACO Supplier, including invoices other than those sent for the goods present.
- d) If the Customer fails to pay on time, the VACO Supplier shall be entitled, without notice of default or judicial intervention being required and without assuming liability for damages, to dissolve the purchase contract and repossess the goods delivered, to which the Customer shall grant the VACO Supplier free access.
- e) As long as the ownership of the goods delivered has not passed to the Customer, the latter may not pledge the goods or encumber them with any other security rights. The Customer shall be allowed to dispose of goods from the VACO Supplier in the course of its normal business operations.
- f) Goods that are present on the Customer's premises and are listed in the VACO Supplier's product range shall be deemed to have come from the VACO Supplier, unless the Customer proves that the goods come from a different source (subject to proof to the contrary).
- g) Until the Customer has paid the VACO Supplier all sums due under a contract, the VACO Supplier may keep the Customer's goods in its possession and recover the sum due therefrom, unless the Customer has provided sufficient security for its debt.

#### **Article 6 - Payment**

- a) Unless agreed otherwise, all deliveries shall be made on cash payment or prepayment. If the parties agree otherwise, payment shall normally be due 14 days after the invoice date. The parties may also agree on a different due date in writing. The applicable due date shall constitute a deadline.
- b) All costs associated with payment shall be borne by the Customer. Payments shall first be applied to settle the costs, then the interest due and finally the principal and current interest. If the principal consists of multiple invoices, the payment shall be allocated to the longest outstanding invoice or invoices, regardless of the invoice numbers that the Customer allocates to the payment.
- c) If the Customer fails to pay by the due date, the Customer shall be in default without further notice being required and shall owe 1% interest on the principal per month or part of a month. If the statutory interest under Section 6:119a or Section 6:119 of the Netherlands Civil Code should be higher, the Customer shall owe this statutory interest.

- d) If the Customer defaults on fulfilling its payment obligations, all costs reasonably incurred by the VACO Supplier to effect settlement out of court shall be charged to the Customer. The extrajudicial collection charges are set at 15% of the principal, unless the Customer demonstrates that the VACO Supplier has incurred less damages.
- e) If the VACO Supplier demands payment in court or otherwise demands performance of the contract in court and the VACO Supplier wins its case in whole or in part, the Customer shall be obligated to pay all costs actually incurred by the VACO Supplier in connection with the legal proceedings, such as the costs of legal assistance, attachment and court registry fees.

#### **Article 7 - Conformity**

- a) The VACO Supplier shall perform the contract to the best of its ability and understanding, in accordance with the requirements of good workmanship. The Customer shall be obligated to examine as soon as possible after delivery whether the VACO Supplier has duly complied with the contract and to notify the VACO Supplier in writing within a reasonable period of time, within 10 working days after delivery at the latest, if the latter's performance should be found inadequate (due date). If notification is not reasonably possible within this period, the deadline shall be 10 working days from the moment the defect is detected or could have been detected.
- b) Complaints shall not entitle the Customer to postpone payment.
- c) If a complaint is lodged on time as referred to in Article 7, paragraph a, the Customer shall allow the VACO Supplier to verify the validity of the complaint. If the complaint is valid, the Customer shall give the VACO Supplier a reasonable period of time to repair or replace the service or item provided.
- d) The parties shall also deem the performance of the contract to be satisfactory if the Customer has failed to effect the verification or notification referred to in Article 7a on time. By signing for correct receipt on delivery, the Customer shall waive the right to lodge any complaints regarding quantity and visible damage to the goods received. No rights can be derived from apparent misprints or typographical errors in catalogues or price lists.
- e) The VACO Supplier shall guarantee both the soundness of the goods delivered in relation to their price and the quality of the services provided, except if:
  - the Customer does not follow the instructions or regulations given by the VACO Supplier or its supplier;
  - they are not used normally;
  - defects are the result of normal wear and tear or normal use;
  - an item is installed, repaired or altered by a third party at the Customer's behest;
  - a government regulation dictates the nature or quality of the materials used;
  - the Customer supplies materials or goods to the VACO Supplier for processing;
  - materials, goods or working methods have been employed on the Customer's express instructions.
- f) If the VACO Supplier replaces any goods pursuant to the provisions of Article 7c or 7e, these items shall become its property. If the Customer has already put the items into use, the VACO Supplier shall be entitled to charge the Customer a fee relative to the period during which the items in question were used by the Customer or a third party and this fee shall be in the same proportion to the purchase price as the period of use to the normal life span of the items.

#### **Article 8 - Liability**

- a) The VACO Supplier's total liability shall be limited to repair, replacement or revocation of the contract. The VACO Supplier shall not be liable for any other compensation (no compensation for consequential loss). The Customer shall be responsible for claims to guarantees provided by third parties (manufacturer or importer).
- b) The VACO Supplier, its subordinates and third parties engaged by it shall not be liable for damage to people, items or the business of the Customer and/or third parties resulting from defects in the goods and/or services provided by the VACO Supplier, except in the event of intent or wilful recklessness.
- c) The Customer shall indemnify the VACO Supplier against third-party claims resulting from a shortcoming in the goods or services provided.
- d) In addition, the VACO Supplier's liability shall be limited to the amount paid out by the insurance company in so far as such liability is covered by the insurance taken out. If the insurance should not provide cover or if the insurance company refuses to pay, the VACO Supplier's liability shall be limited to the invoice value of the relevant item and/or service.

- e) In the event of any damage caused by a defect in an item delivered by the VACO Supplier which was neither produced nor imported into the European Union by the same, the VACO Supplier shall undertake to inform the Customer within a reasonable term of the address of the supplier, producer or importer in the EU. If the VACO Supplier is not or no longer able to do so or if it has produced the item or imported it into the European Union itself, its liability shall not exceed its statutory obligations (pursuant to Sections 185 - 193 of Book 6 of the Netherlands Civil Code) and its obligations pursuant to the provisions of Article 8, paragraph a.

#### **Article 9 - Suspension and Dissolution**

- a) The VACO Supplier shall be authorised to suspend the fulfilment of its obligations or to dissolve the contract without assuming liability for damages if:
  - the Customer fails to fulfil its obligations under the contract or fails to do so on time or in full;
  - after conclusion of the contract, the VACO Supplier has reason to believe that the Customer will not be able to fulfil its obligations or to do so on time or in full;
  - on conclusion of the contract, the Customer is obligated to provide sufficient security for fulfilment but fails to do so or, in the VACO Supplier's opinion, provides insufficient security;
  - such unforeseeable circumstances occur that the Customer is unable to perform the contract, such as in the event of insolvency on the part of the Customer or if the unforeseeable circumstances are such that an unamended continuation of the contract cannot be required of the parties by standards of reasonableness and fairness.
- b) If the contract is dissolved, all amounts receivable from the Customer shall become immediately exigible and the VACO Supplier shall retain its claims to damages.

#### **Article 10 - Applicable Law and Disputes**

- a) All contracts concluded with the VACO Supplier shall be governed by Netherlands law. Applicability of the CISG or the Vienna Sales Convention is expressly excluded.
- b) Any disputes ensuing from contracts with the VACO Supplier shall be brought before a Dutch Court in the district where the VACO Supplier has its registered office, unless statutory regulations dictate otherwise.