

# General Terms and Conditions of Sale

## I. Proposal

In the absence of any separate contractual agreements, SwissVacuum Technologies SA, as the supplier, shall effect deliveries and provide services exclusively under the terms and conditions set forth herein. Under no circumstances shall any contradictory terms and conditions of purchase of Purchaser become a part of the contract – and neither by acceptance of an order –, even if not expressly refuted. These General Terms and Conditions of Sale and Supply shall apply to both the present transaction as well as to any and all future business transactions

## II. Proposal and Contract

The information contained in price lists, catalogs and advertising media relating to SwissVacuum Technologies's performances shall not represent any proposals. Such documents as illustrations, drawings, weights and measurements pertaining to a proposal shall be subject to change without notice and shall be only approximately definitive, unless they have been expressly stipulated as being binding. Verbal advice, collateral agreements and assurances of whatever nature shall be void unless they have been confirmed in writing by SwissVacuum Technologies as being agreed. Minor variances from product specifications shall be deemed to have been approved. In the absence of any special agreement, a contract shall only be deemed to have been entered upon SwissVacuum Technologies's written confirmation of order or upon delivery of the goods. SwissVacuum Technologies SA reserves all ownership rights and copyrights to its samples, cost estimates, plans, drawings and similar information of either a tangible or intangible nature – including information in electronic form–, as well as to any and all other documents; said items shall only be made available to third parties with the written consent of SwissVacuum Technologies SA.

## III. Scope of Supply

SwissVacuum Technologies's written confirmation of order shall be definitive with respect to the scope of and all further details relating to the supply; in the case of a time-limited proposal from SwissVacuum Technologies SA and its acceptance by Purchaser within the stipulated term, said proposal shall be deemed to be definitive in the absence of timely confirmation of order by SwissVacuum Technologies SA. Any collateral agreements or modifications shall require written confirmation by SwissVacuum Technologies SA.

## IV. Prices and Payment

- a) Prices shall be either ex works or ex consignment warehouse, including loading at the factory or consignment warehouse, however exclusive of packing materials and statutory value added tax. SwissVacuum Technologies SA shall be entitled to invoice packing materials at cost and reserves the right to require return of its transport packing materials free of charge, provided said packing materials have been delivered free of charge by SwissVacuum Technologies SA. No credit shall be given for returned packing materials.
- b) The following payment terms shall be applicable with respect to systems, products and services:
  - If the amount is over CHF 10'000, the payment due is:
    - 1/3 advance payment upon receipt of the confirmation of order
    - 1/3 as soon as Purchaser has been notified that the major components are ready for shipment
    - 1/3 within 30 days from delivery
  - If the amount is under CHF 10'000, the payment due is:
    - The total amount is due within 30 days from delivery
- c) The minimum order value shall be to CHF 100.00
- d) The Buyer is entitled by agreement with SwissVacuum Technologies SA to rescind an order in writing within 14 days of the order being confirmed by SwissVacuum Technologies SA. In the case of a rescission, SwissVacuum Technologies SA is entitled to invoice 15% of the total value of the order as a lump-sum payment for expenses. Goods returned following rescission will furthermore be subject to a charge of 10% of the net value of the goods, but not less than one CHF 100.00, to cover the functional testing and processing required.

## V. Delivery Term

1. The delivery term shall be based upon the agreements reached between the contracting parties. Compliance with the delivery term by SwissVacuum Technologies SA shall necessitate that all commercial and technical questions between the contracting parties have been clarified and that Purchaser has satisfied all of its obligations, e.g. submittal of the documents, approvals or releases to be procured by Purchaser, or that an agreed advance payment has been made. Should this not be the case, the delivery term shall be appropriately extended. This shall not apply to the extent that SwissVacuum Technologies SA is responsible for said delay.
2. Compliance with the delivery term shall be subject to correct and timely delivery of supplies to SwissVacuum Technologies SA
3. The delivery term shall be deemed to have been observed if the supplied items have left SwissVacuum Technologies's office or notification of readiness for shipment has been made prior to the expiration of the delivery term
4. Should shipment of the supplied item be delayed due to reasons for which Purchaser is responsible, Purchaser shall be charged for the costs incurred as a result of said delay, beginning one month subsequent to notification of readiness for shipment.
5. Should failure to observe the delivery term be caused by force majeure, strikes, lock-outs or other events beyond the control of SwissVacuum Technologies SA, the delivery term shall be appropriately extended. This shall also apply if a subcontractor is subjected to such circumstances. Nor shall the above-described circumstances be the responsibility of SwissVacuum Technologies SA if they arise during an existing delay. In important cases, SwissVacuum Technologies SA shall inform Purchaser as soon as possible of the beginning and end of such hindrances.
6. Purchaser shall be entitled to withdraw from the contract without notice it has finally become impossible for SwissVacuum Technologies SA to provide the entire performance prior to passage of the risk. Furthermore, Purchaser shall also be entitled to withdraw from the contract if the execution of a part of an order has become impossible or if Purchaser has a legitimate interest in refusing partial delivery. Should this not be the case, Purchaser shall pay the contractual price relating to the partial delivery. The same shall also apply in the event of SwissVacuum Technologies's inability to perform. Apart from this, Point IX. a. shall apply. Should the impossibility or inability to perform occur during delay in acceptance or should Purchaser solely or predominantly be responsible for said circumstances, Purchaser shall be obligated to provide compensation therefor.
7. Should SwissVacuum Technologies SA be delayed in making delivery and should Purchaser incur damages therefrom, Purchaser shall be entitled to demand liquidated damages for delayed performance, to the exclusion of any and all further claims. Said liquidated damages shall amount to 0.7% of the invoice amount per full week of delay, however not more than 6% of the value of that portion of the entire delivery that cannot be utilized in a timely fashion or according to the contract as a result of said delay. Any and all further claims arising from the delay in delivery shall be governed exclusively by Point IX. a. Should Purchaser grant the supplier in delay an adequate term for performance – with due regard to statutory exceptions – Purchaser shall be entitled to withdraw from the contract within the framework of statutory provisions if said adequate term is not observed. At the demand of SwissVacuum Technologies SA, Purchaser shall agree to state within an adequate term whether it intends to exercise its right to withdraw from the contract
8. Should shipment be delayed at the request of Purchaser, Purchaser shall be charged the storage costs incurred therefor, beginning one month subsequent to notification of readiness for shipment; in the case of storage at the SwissVacuum Technologies SA factory or consignment warehouse, however, at least 0.5% of the invoice amount for each month. Following stipulation and expiration of an adequate term, SwissVacuum Technologies SA shall additionally be entitled to otherwise dispose of the item to be supplied and to effect delivery to Purchaser subject to a reasonable extended term.
9. Insofar as there are no agreements to the contrary, the first loading of the means of conveyance and the transport containers must be under the responsibility and with the tools of the consignor, and the last unloading of the same must be under the responsibility and with the tools of the consignee.
10. At the product receiving, is consignee responsibility to check it and write on the delivery sheet "subject to control". If not, Swiss Vacuum Technologies SA will not be able to respond to any possible damage.

## VI. Passage of Risk

1. The risk shall pass to Purchaser at the latest upon shipment of the items to be supplied, even if partial deliveries are made or if SwissVacuum Technologies SA has assumed other performances, e.g. shipping costs for delivery and installation. Upon request by Purchaser, SwissVacuum Technologies SA shall insure the consignment at Purchaser's expense against theft, breakage, shipping, fire or water damage, as well as any and other insurable perils.
2. Should shipment be delayed due to circumstances for which SwissVacuum Technologies SA is not responsible, the risk shall pass to Purchaser upon the day that notification of readiness for shipment is made. SwissVacuum Technologies SA shall undertake to obtain the insurance coverages requested by Purchaser at Purchaser's expense.
3. Purchaser shall be required to accept delivered items even in the presence of immaterial defects or deficiencies, without prejudice to the rights set forth in Point VIII.
4. Partial deliveries shall be permissible if not unreasonable for Purchaser.

## VII. Retention of Title

1. SwissVacuum Technologies SA shall retain title to the supplied item until any and all payments have been received – including payments for any performances that might additionally be owed – arising from the contract for supply and until such time as payment has been received for any and all claims against Purchaser or members of its corporate group by SwissVacuum Technologies SA.
2. SwissVacuum Technologies SA shall be entitled to insure the supplied item against theft, breakage, fire, water or other perils at Purchaser's expense unless Purchaser shall have evidenced that it has taken out such insurance coverage itself.
3. Should Purchaser be in breach of the contract, in particular in the case of payment default, SwissVacuum Technologies SA shall be entitled to retrieve the supplied item following issuance of a warning notice, and Purchaser shall be required to surrender said supplied item. SwissVacuum Technologies's right to assert its right to retention of title or to attachment of the item shall not constitute a withdrawal from the contract on the part of SwissVacuum Technologies SA.
4. Petition for the initiation of insolvency proceedings shall entitle SwissVacuum Technologies SA to withdraw from the contract and to demand the immediate return of the supplied item.

## VIII. Warranty

Subject to the exclusion of any further claims – and as governed by Point IX – SwissVacuum Technologies SA shall warrant against material defects and deficiencies in title as follows:

### Material defects

1. All components that prove to be deficient due to circumstances existing prior to the time of passage of the risk shall be remedied or re-supplied free of charge by SwissVacuum Technologies SA at its option. SwissVacuum Technologies SA shall be notified of such defects and deficiencies in writing without delay.
2. Following written notification, Purchaser shall provide SwissVacuum Technologies SA with the required time and opportunity to remedy any and all defects or effect any and all replacement supplies that SwissVacuum Technologies SA shall deem necessary; otherwise, SwissVacuum Technologies SA shall not be liable for the consequences thereof. Only in urgent cases endangering operational safety or to prevent unreasonably high damages, whereby SwissVacuum Technologies SA shall be notified immediately, shall Purchaser have the right to remedy the defects itself or to have them remedied by third parties, and to demand restitution for the necessary expenses incurred.
3. Of the costs resulting from repair or replacement, SwissVacuum Technologies SA – should the complaint prove to be legitimate – shall bear the costs of the replacement item, including shipping (however excluding express deliveries and deliveries to other countries), as well as the reasonable costs associated with removal and reinstallation, as well as the costs of any required provision of SwissVacuum Technologies's fitters and helpers which may equitably be necessitated on the basis of the individual case in question.
4. Within the framework of statutory provisions, Purchaser shall have the right to withdraw from the contract should Swissvacuum Technologies SA – with due consideration being given to statutory exceptions – allow an appropriate term to repair or replace, of which it has been notified in writing, to lapse. In the case of only immaterial defects or deficiencies, Purchaser shall only be entitled to claim a reduction of the contractual price. There shall otherwise be no right to a reduction of the contractual price.

5. No warranty shall be assumed in the following cases, in particular:  
**Use of non-genuine Swissvacuum Technologies SA**, unsuitable or improper use, faulty or defective assembly and/or start-up by Purchaser or by third parties, natural wear and tear, faulty or neglectful treatment, improper maintenance, unsuitable operating fluids, deficient construction work, unsuitable building substrates, chemical, electrochemical or electrical influences that are not the responsibility of SwissVacuum Technologies SA.
6. Should Purchaser or a third party improperly remedy any defect, Swissvacuum Technologies SA shall not be liable for the consequences resulting therefrom. The same shall also apply with respect to any alterations of the supplied item by Purchaser or third parties without the prior consent of Swissvacuum Technologies SA.

#### **IX. Liability**

1. If through the fault of Swissvacuum Technologies SA the supplied item cannot be used by Purchaser in accordance with the contract due to neglected or faulty execution in connection with proposals and consultations prior to or subsequent to the execution of the contract or through infringement of other collateral contractual obligations – in particular with regard to instructions for the operation and maintenance of the supplied item – the provisions set forth in Points VIII. and IX. 2 shall apply accordingly, to the exclusion of any and all further claims by Purchaser.
2. In the case of damages that are not incurred on the supplied item, itself, Swissvacuum Technologies SA shall – for whatever legal reasons – be liable only
3. a) In the event of willful intent
4. b) In the event of gross negligence on the part of its owner/corporate bodies or executives
5. c) In the event of culpable injury to life, limb or health
6. d) In the event of defects or deficiencies that Swissvacuum Technologies SA has maliciously concealed
7. e) Within the framework of an assured warranty
8. f) In the event of defects or deficiencies in the supplied item to the extent liability exists under the Swiss Product Liability Act for personal injury or property damage in connection with privately utilized items.
9. In the event of a culpable infringement of major contractual obligations, Swissvacuum Technologies SA shall also be liable in the case of gross negligence on the part of non-executive employees and in the case of minor negligence, however in the latter case limited to typical damage under the contract that could reasonably be foreseen.
10. No further entitlements shall exist.

#### **X. Statute of limitations**

Any and all claims on the part of Purchaser – regardless of the legal grounds therefor – shall be subject to a statute of limitations of 12 months. This term shall not recommence for spare or replacement parts supplied within this period; the original warranty term for the supplied item shall instead continue to be definitive. Claims for indemnification pursuant to Points IX. 2.a) - d) and f) shall be subject to the statutory terms

#### **XI. Applicable Law/Venue (does not apply to consumers)**

1. Any and all legal relationships between Swissvacuum Technologies SA and Purchaser shall be subject exclusively to the pertinent laws of the Swiss Confederation. This shall also apply with respect to foreign business transactions. The application of the U.N. Convention on Contracts for the International Sale of Goods (CISG) shall be excluded
2. The venue shall be the court having jurisdiction for Swissvacuum Technologies 's domicile. However, Swissvacuum Technologies SA shall also be entitled to bring action at Purchaser's primary domicile.