

# General Terms and Conditions of Purchase of Veritas Aktiengesellschaft

# General Terms and Conditions of Purchase of Veritas Aktiengesellschaft

(hereinafter named „GTC“)

## **1. General; scope of applicability**

1.1. These General Terms and Conditions of Purchase shall apply exclusively unless explicitly agreed upon differently in writing by both parties. We do not accept any supplier terms and conditions in opposition to or deviating from our terms and conditions. This shall apply also if we do not explicitly object to these. Unconditional payment and acceptance of contractual performance by our company shall not be construed to be acknowledgement of any supplier terms and conditions of sales or delivery.

1.2. These General Terms and Conditions of Purchase shall apply also to all business transactions for procurement and/or delivery of movables as well as other services to be provided by suppliers even if they are not explicitly agreed upon again. We will immediately notify the supplier about any changes to our GTC.

1.3. Our General Terms and Conditions of Purchase apply only to entrepreneurs as defined in §§14, 310 sec.1 BGB (*German civil code*).

## **2. Contract conclusion**

2.1. Purchase orders and agreements between our company and the supplier shall be effective and binding only if issued or confirmed in writing by our procurement department; (telefax, e-mail or transmission from our ERP-System shall be deemed to comply with such requirement).

2.2. If the supplier fails to acknowledge the purchase order within five business days, we are no longer bound to the purchase order.

## **3. Prices and payment terms; assignment of claims**

3.1. The price stated in our purchase order is binding. In the absence of other written agreement, the price shall include delivery free domicile including packaging. Upon our request, the supplier shall take back the packaging material.

3.2. Statutory VAT is not included in the price.

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3.3. Invoices will state the order number and the supplier code; invoices for call-offs will also state the call-off number.

3.4. Unless agreed upon differently, payments will be made inside of 14 days counting from the time of delivery and proper invoice receipt with a discount of 3%, after 30 days net. If complete and flawless goods are delivered later than the invoice is received or if the invoice is incomplete, the date the goods are received or the proper invoice is received shall be decisive for defining such payment term. For any bank transfers, payment shall be considered made in due time if our transfer order is received by our bank prior to expiration of the payment term; we shall not be liable for delays in bank payment processes.

3.5. If claims are asserted against us for payment of statutory or contractually agreed interest for delay or compensation for damages, we are entitled to demonstrate that the supplier actually suffered lower damages. The interest on arrears shall be five percentage points annually over the base interest rate.

3.6. We shall not owe any due date interest.

3.7. We are entitled to statutory rights to retention and offsetting as well as defense of lack of contractual performance. We are particularly entitled to refrain from making due payments as long as we are entitled to claims against the supplier for incomplete or defective delivery.

3.8. The supplier without our prior written consent shall not be entitled to assign his claims against us or to have these collected by third parties; we will not unreasonably refuse such consent. In the presence of extended reservation of title, the consent is considered given. If the supplier assigns his claims against us to a third party without our consent, the assignment shall nevertheless be legally effective. We may at our own discretion provide our contractual performance to the supplier or the third party with discharging effect.

## **4. Delivery period; delay in delivery**

4.1. The delivery times and agreed deadlines and periods stated in the purchase orders are binding. The supplier must notify us immediately if he becomes aware of any foreseeable delays in delivery.

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4.2. In the event of any delays in delivery, we are entitled to statutory claims. We are in particular entitled to claim compensation for damages caused by delay.

4.3. If the supplier is in delay, we may claim payment of a contractual penalty in amount of 1% of the net price per expired full calendar week, however in total no more than 5% of the net price of the goods delivered with delay. We are entitled to request payment of the contractual penalty in addition to fulfillment of contract and as minimum sum for statutory compensation for damages owed by the supplier; the right to claim further compensation for damages shall remain unaffected. If we accept the delayed contractual performance, we will assert the contractual penalty by no later than the date of final payment.

## **5. Quality; documentation; safety**

5.1. If the nature and scope of inspections and testing, test devices and methods as well as archiving requirements for quality records have not already been agreed between our company and the supplier, for example in a quality assurance agreement, we are entitled during the manufacturing process and up to delivery of ordered goods to inspect at the supplier site all material, manufacturing processes and other work required to provide the contractual performances. If such inspection is refused without significant cause, we are entitled to withdraw from the contract. This applies also if a preceding inspection already produces defects or deviations from the contractual characteristics and these cannot be remedied prior to the agreed delivery date. We may also at any time request reporting on the goods we ordered, in particular their status of manufacture. The supplier may not argue that we had not made use of our rights as provided in this section.

5.2. The supplier will archive the quality records for his goods for a period of two years, unless statutory or other applicable archiving periods are longer. The quality records will be submitted to us if so required.

5.3. The delivery items will correspond to our material specifications, the statutory and public administrative regulations including those on accident prevention and all applicable DIN, VDE and comparable standards. Hazardous materials will be labeled as such.

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5.4. An analysis certificate will be enclosed to each raw-material shipment. The batch numbers must be stated in all delivery documents.

5.5. Our plant regulations, the applicable accident-prevention guidelines and the fire-prevention rules apply to any work to be done at our facilities.

## **6. Warranty for defects**

6.1. In compliance with statutory regulations, the supplier shall particularly be liable for the goods featuring the agreed characteristics at the time risk passes over. Such agreed characteristics shall in any case be those product descriptions which – in particular by way of designation or reference in our purchase order – are an integral element of the respective purchase order or which in identical manner as these GTCs are integrated into the contract. It makes no difference if the product description was provided by our company, the seller or the manufacturer.

6.2. Unless provided differently in quality assurance agreements between our company and the supplier, we will inspect the goods within a reasonable period of time for any quality and quantity deviations. Notices of defects will be considered made in due time if they are received by the supplier within a period of five business days from the day of goods receipt or – in the event of concealed defects – from the time these are discovered.

6.3. We are entitled to unrestricted statutory warranty claims, in particular the claim to remedying of defect or delivery of non-defective items (supplementary performance) at our sole discretion. The supplier will bear all costs and expenses required for supplementary performance; this shall also include dismantling and assembly costs. At our request, the supplier will take back the defective delivery item. If the supplier is at fault, we explicitly reserve the right to claim compensation for damages, in particular to compensation for damages in lieu of contractual performance.

6.4. Our liability for damages in the event of unjustified requests for removal of defects remains unaffected; in this respect we shall be liable only if we realized or due to gross negligence failed to realize that there was no defect.

6.5. Any acknowledgement of receiving contractual deliveries or the acceptance or approval of submitted drawings shall not be construed to be any waiver of our claims to warranty or any other rights.

6.6. The warranty period shall be 36 months after passage of risk.

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## **7. Liability**

7.1. Liability shall be based upon statutory provisions unless agreed upon differently or regulated differently in these terms and conditions.

7.2. If the supplier is responsible for a product defect, he is obligated to hold us harmless in this context upon first request against third-party claims to compensation for damages if the cause originates from within his domain and organizational area and he is himself liable to third parties.

7.3. In the scope of his liability for damages as defined above, the supplier shall also be obligated to refund any costs and expenses within the meaning of §§ 683, 670 BGB and §§ 830, 426 BGB (*German civil code*) incurred from or in context with any product recall campaign conducted by our company. To the extent possible and feasible, we will notify the supplier about content and extent of the required product recall campaign and will give him the opportunity to deliver an opinion. Any other legal claims and entitlements shall remain unaffected.

7.4. To the extent recourse is taken against us within the meaning of §§ 478, 479, 434 BGB and the cause for the defect is within the supplier's domain, he shall be obligated at first request to hold us harmless against any pertinent third party's recourse claims.

## **8. Transferal/assignment of contractual performance**

Without our prior approval, the supplier may not have other companies provide contractual services entirely or in part. Such approval shall not be unreasonably denied.

## **9. Confidentiality**

9.1. Our purchase orders and all commercial and technical details in context with these and of which the supplier becomes aware in context with the business relation are to be kept in strict confidentiality unless the facts and circumstances are already in the public domain.

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9.2. Drawings, models, templates, samples and other similar items may not be disclosed to unauthorized third parties or otherwise made accessible; this applies also after the contract expires. Any duplication of these items is admissible only as required for operational purposes. As long as they have not been processed, these items will be stored separately at the supplier's expense and will be adequately insured against loss and destruction.

9.3. The supplier may refer to business relations to our company only after our prior written approval.

## **10. Place of fulfillment, passing of risk**

10.1. The agreed place of goods receipt shall be place of fulfillment for deliveries and services. This shall apply also for defect warranty obligations. Gelnhausen shall be place of fulfillment for all other obligations or if no place of receipt has been agreed.

10.2. Any deliveries, including those to a location other than the place of fulfillment, shall be at the supplier's risk.

## **11. Place of jurisdiction; applicable law**

11.1. Hanau shall exclusively be place of jurisdiction for all disputes arising directly or indirectly from or in context with this contractual relation. However, we may also take legal action at the supplier's place of residence or business or at those courts at which third parties take legal action against our company in context with circumstances originally arising from the supplier's delivery, services or other contractual obligations.

11.2. The laws of the Federal Republic of Germany shall apply exclusively unless agreed upon differently. The UN Convention on Contracts for the International Sales of Goods [CISG] of April 11, 1980 shall not apply.

**The German version of these GTCs shall be exclusively authoritative; the English version is for information only.**

Status: March 1st, 2015

# Standard Terms and Conditions of Veritas Aktiengesellschaft

## **1. Definition/Scope**

1.1 Our Standard Terms and Conditions of Sale shall apply exclusively; any conflicting or deviating terms and conditions of the Buyer shall not be recognised by us, unless we have expressly agreed to their validity in writing. Our Standard Terms and Conditions of Sale shall apply even if we make the delivery to the Buyer without reservation, in full awareness of conflicting or deviating terms and conditions of the Buyer.

1.2 Agreements between us and the Buyer shall not be binding unless they have been confirmed in writing by us. In the event of framework agreements, individual calls shall be exempted from the requirement of the written form.

1.3 Our Standard Terms and Conditions of Sale shall also apply to all future transactions with the Buyer.

1.4 Our Standard Terms and Conditions shall only apply to merchants within the meaning of § 310 para. 1 BGB (German Civil Code).

## **2. Conclusion of contract, offer documents**

2.1 An order shall not be deemed to have been accepted unless it has been confirmed by us through a written confirmation of order.

2.2 The transmission of offers, price lists, circular letters or general proposals shall not be deemed to be a binding offer within the meaning of § 145 BGB.

2.3 We shall reserve property rights and copyrights in respect of cost estimates, draft, drawings and other documents; they may not be made accessible to third parties.

## **3. Prices/terms of payment**

3.1 Unless otherwise stipulated in the confirmation of order, our prices shall be deemed to be "ex works". Inner packaging such as films shall not be invoiced. Outer packaging and overpacks shall be invoiced at cost. Normal boxes shall be credited at two-thirds of their value, jute bags at their full value in the event of prepaid return in a usable condition. No compensation shall be paid for returns of any other packages.

3.2 We reserve the right to increase our prices accordingly, if cost increases occur after the conclusion of the contract, particularly as a result of collective bargaining agreements or material cost increases. We shall produce evidence of the latter at the request of the Buyer.

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3.3 In the case of small orders, we must invoice minimum amounts which take the special expenses involved in their handling into due account. 1.2 Agreements between us and the Buyer shall not be binding unless they have been confirmed in writing by us. In the event of framework agreements, individual calls shall be exempted from the requirement of the written form.

3.4 The purchase price must be paid net, without postage and expenses, 30 days from the date of invoice. If the Buyer is in default of payment, we shall be entitled to charge default interest in the amount of 8 percentage points above the corresponding base rate. If we are able to produce evidence of higher damage caused by the delay, we shall be entitled to assert it.

3.5 We shall grant a 2 % discount if the invoices are paid within 14 days of the date of invoice and all payment obligations due from previous deliveries have been satisfied. No discount shall be granted for invoices concerning moulds or tools.

3.6 No interest shall be paid on advance payments or payments on account.

3.7 The Buyer shall not have offsetting rights unless his counterclaims have been established in a final and conclusive manner and are uncontested or recognised by us. Nor shall the Buyer have any right of retention in respect of contested counterclaims.

3.8 Bills shall not be accepted by us; cheques shall only be accepted on account of performance. Any expenses incurred in this respect and other fees shall be borne by the Buyer.

## **4. Delivery/delivery period**

4.1 If we default in delivery for reasons for which we are not responsible, liability for damages shall be excluded in the event of ordinary negligence. We shall, more particularly, not be responsible for cases of force majeure; the latter shall release us from delivery or performance in due time and shall, moreover, entitle us to discontinue our deliveries without setting a deadline for delivery.

4.2 If the Buyer grants us an additional period of time of reasonable length under threat of rejection, after we are already in default, he shall be entitled, after the ineffectual expiry of this additional period of time, to rescind the contract. The Buyer shall only be entitled to damage claims for non-performance in the amount of the foreseeable damage if the default was caused by wrongful intent or gross negligence; as for the rest, liability for damages shall be limited to 50% of the damage caused.

4.3 Partial deliveries shall be admissible.

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4.4 Compliance with our obligation to deliver shall presuppose that the obligations of the Buyer have been met properly and in due time.

4.5 If the financial situation of the customer deteriorates in such a way that doubts arise in respect of his solvency, we shall be entitled to discontinue the deliveries and provision of services immediately and grant the Buyer a period of time for (advance) payment or the furnishing of collaterals. After an expiration of the deadline to no avail, we shall be entitled to rescind the contract.

## **5. Warranty for defects**

5.1 The warranty rights of the Buyer shall only be deemed to exist if he has satisfied the obligations in terms of examination and notification of defects in a proper manner in accordance with § 377 HGB (German Commercial Code).

5.2 If the delivered goods have defects which are covered by warranty, we shall be entitled, at our option, to remedy the defects or make a replacement delivery. If we refuse performance of the contract in a serious and final manner or if the remedying of the defects or replacement delivery fails, the Buyer may rescind the contract in accordance with the statutory provisions or reduce the purchase price.

5.3 Unless otherwise stipulated hereinbelow, any more extensive claims of the

Buyer - for any legal reasons whatsoever - shall be excluded. Consequently, we shall not be liable for damage which was not caused in respect of the subject matter of delivery itself; we shall not be liable for any lost profit or other financial loss of the orderer.

5.4 The aforementioned exclusion of liability shall not apply if the cause underlying the damage was attributable to wrongful intent or gross negligence. Moreover, it shall not apply insofar as we have taken over a warranty for a particular condition of the goods or any other warranty.

5.5 In the event of slightly negligent violation of essential contractual obligations, we shall be liable up to the foreseeable damage for the corresponding type of contract.

5.6 The warranty period shall amount to one year from the passage of risk.

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## **6. General liability**

6.1 Any liability for damages, which is more extensive than provided for in Clause 5, shall be excluded regardless of the legal nature of the asserted claim.

6.2 These provisions shall not apply to claims under the Product Liability Act. To the extent that our liability is excluded or restricted, this shall also apply to the personal liability of our employees, salaried employees, persons employed for the performance of our duties and representatives.

## **7. Retention of title**

7.1 We shall retain title to the delivered goods until receipt of all payments under the business relationship with the Buyer. In the event of breach of contract by the Buyer, more particularly in the case of default in payment, we shall be entitled to take back the goods and immediately rescind the contract. After taking back the goods, we shall be entitled to realise them; the proceeds from such realisation shall be set off against the liabilities of the Buyer, after deduction of proper realisation expenses.

7.2 The Buyer shall be obliged to treat the goods with care and to comply, more particularly, with the relevant DIN standards.

7.3 The processing or transformation of the goods by the Buyer shall always be for us. If the goods are processed together with other items which do not belong to us, we shall acquire co-ownership of the new item in the proportion of the value of our goods to the other processed items at the time of processing. The item resulting from such processing shall, as for the rest, be governed by the same provisions as those applying to goods delivered subject to reservation. If the goods are mixed in an inseparable manner with other items which do not belong to us, we shall acquire co-ownership of the new items in the proportion of the value of the goods to the other mixed items at the time of mixing. If the mixing occurs in such a way that the items of the Buyer are to be considered as the main item, it shall be deemed to have been agreed that he shall transfer proportional co-ownership to us.

7.4 The Buyer shall be entitled to sell the goods on in the ordinary course of business; however, he shall - already at this stage - assign all accounts receivable in the amount of the final invoice which arise from reselling against his buyers or third parties, regardless whether the goods are sold with or after processing. The Buyer shall remain entitled to collect these accounts receivable also after their assignment. Our entitlement to collect the accounts receivable ourselves shall not be affected. If we were to use this entitlement, we could require the Buyer to provide all information necessary for the purpose of collection, to submit the corresponding documents and to inform the debtors/third parties about the assignment.

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7.5 In the event of pledging or other interventions of third parties, the Buyer must immediately inform us in writing. Göhmann Wrede Haas Kappus & Hartmann Page 3

## **8. Passing of risk**

Unless otherwise laid down in the confirmation of order, delivery "ex works" shall be deemed to have been agreed.

## **9. Place of jurisdiction and place of performance/applicable law**

These Standard Terms and Conditions of Sale shall be governed by German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods. Should one or more clauses of the Standard Terms and Conditions be or become invalid as a whole or in part, the validity of the remaining provisions shall not be affected. The place of jurisdiction for all claims under this business relationship shall be, at our option, Gelnhausen or Frankfurt am Main. The place of performance shall be Gelnhausen.

Status: September 1st, 2002