

SALES TERMS AND CONDITIONS

vacuubrand

1 General conditions

- 1.1 **Conflicting business conditions, confirmation in writing**
The only terms and conditions for contracts between VACUUBRAND GMBH + CO KG (hereinafter "VACUUBRAND") and her customers shall be those terms and conditions of VACUUBRAND as from time in force and available to the customer. VACUUBRAND will not accept any conflicting general business terms, whether or not expressly rejected by VACUUBRAND. Modifications or additional terms shall not be binding unless expressly agreed to in writing by VACUUBRAND's authorized management. The language of the contract shall be German or English.
- 1.2 **Offers, right to make modifications, electronic data storage**
All bids and offers are subject to modification at VACUUBRAND's discretion. VACUUBRAND reserves the right to make technical improvements and modifications of products without prior notification. VACUUBRAND may store and process contract information in data processing systems.
- 1.3 **Offsetting, withholding**
Unless a customer has undisputed counterclaims, he shall neither be entitled to offset nor to withhold payments for deliveries received.
- 1.4 **Court of jurisdiction, governing law**
For disputes arising out of contracts at VACUUBRAND's discretion the courts of jurisdiction in Wertheim/Mosbach, Germany or the courts relevant for the customer shall be competent. All contracts with German customers shall be construed and interpreted in accordance with the laws of the Federal Republic of Germany, contracts with foreign customers including the 'UN Convention on the International Sale of Goods', CISG. Disputes with foreign customers shall be finally settled according to the Arbitration Rules of the German Institution of Arbitration e.V. (DIS), the Chamber of Commerce in Heilbronn, Germany being solely competent without recourse to the ordinary courts of law. In cases where the arbitral tribunal cannot be installed or should prove to be incompetent, the ordinary courts of jurisdiction in Wertheim/Mosbach shall be solely competent, German law being solely applicable.

2 Delivery, shipping costs

- 2.1 Place of performance shall be VACUUBRAND's factory in Wertheim, Germany. The risk shall be transferred to the customer when the shipment leaves VACUUBRAND's factory. This shall apply also when VACUUBRAND has agreed to provide additional services such as freight forwarding, packing, exportation and installation.
- 2.2 The customer shall bear all packing, transport and insurance costs to the place of delivery.

3 Delivery period, delay

- 3.1 Indicated delivery periods are ex works VACUUBRAND and shall commence only after settlement of all technical questions and after VACUUBRAND has received all documents, permits or releases required from the customer or from authorities as well as any advance payments requested. Shipping date shall be deemed met if the consignment has left VACUUBRAND's facility within the indicated delivery period or if the customer has been provided with information that the products are ready for dispatch.
- 3.2 Acts of God, strikes, lockouts, operating breakdowns, shortages of raw materials or means of production for which VACUUBRAND is not responsible, including delayed deliveries or failure to deliver by the suppliers of VACUUBRAND, and modification of products or services requested by the customer, shall extend the delivery period accordingly and/or shall release VACUUBRAND from her obligation to deliver if delivery becomes impossible as a result.
- 3.3 VACUUBRAND will be regarded as in arrears as regards shipment only if the customer has notified VACUUBRAND in writing and if an adequate extension has been granted.
- 3.4 VACUUBRAND is liable for damages caused by late deliveries only in case of intent or gross negligence. Liability is limited to the extent of foreseeable and typical damage. The customer has to inform VACUUBRAND immediately in writing about any impending damages due to delays.

4 Conditions of payment, price alterations, compensation for returned products

- 4.1 Prices quoted shall be EXW (ex-works). Charges for packaging, freight and insurance shall be at the customer's expense. If applicable, VAT will be added.
- 4.2 In case of any delays in payment of any invoices, the total amount of the customer's liabilities to VACUUBRAND shall be payable immediately and VACUUBRAND shall be released from any obligations to effect any further deliveries resulting from any contract. Furthermore VACUUBRAND reserves the right to require payment in advance in any such case or should any monetary instrument be returned to VACUUBRAND for insufficient funds, or if the customer declares bankruptcy, or files any statements which in VACUUBRAND's opinion may indicate that there could be a delay or failure in VACUUBRAND's ability to collect any funds, including accrued interest on outstanding payments.
- 4.3 Invoices are due immediately and shall be paid in full, without deductions, all transaction-related banking fees at the customer's expense, and must be credited to VACUUBRAND's account in the Federal Republic of Germany, in EURO (€). In case VACUUBRAND has granted payment terms, payment shall be effected and must be credited to VACUUBRAND's account by the due date indicated on the invoice. VACUUBRAND shall accept bills of exchange or checks only with a view to performance at the customer's expense.
- 4.4 VACUUBRAND retains, at her sole discretion, the right at any time to deny any extension of credit to either new or existing customers. VACUUBRAND retains the right to request payment in full in advance or appropriate bank guarantee for any shipment.
- 4.5 No products shall be returned without prior written authorization. All returned goods must be the current model, complete in their original packaging and in new saleable condition. All returns are subject to a 15% re-stocking fee (€ 10 minimum), notwithstanding further indemnity claims.
- 4.6 Claims by the customers against VACUUBRAND, e. g. for credit notes, VACUUBRAND is entitled to balance against open invoices, also if invoices are not yet due.
- 4.7 In case of delay in payment and notwithstanding further indemnity claims the customer shall pay interest on all amounts in arrears as per §288 German Civil Code (BGB).

5 Reservation of proprietary rights

- 5.1 The delivered products shall remain the property of VACUUBRAND and title shall be withheld until all open liabilities of the customer have been fully and unconditionally paid for.
- 5.2 The customer may resell products delivered conditionally, only if claims arising from the resale have not been assigned, pledged, attached or otherwise encumbered or are able to be offset against counterclaims.
- 5.3 Customer shall assign to VACUUBRAND in advance, any accounts receivable arising from the sale of products delivered conditionally and of newly constituted products to the amount of the invoice for the products delivered conditionally.
- 5.4 Customer must immediately inform any subsequent purchasers of VACUUBRAND's reservation of proprietary rights. Any and all revenue received by the customer relating to the sale of products shall be used exclusively for paying any amounts due to VACUUBRAND. VACUUBRAND retain the right to reclaim any products which are still in the customer's possession. The customer may have the accounts receivable for products delivered conditionally or under joint ownership as per clause 5.2 and 5.3 factored only if the Factor is aware of the advance assignment of claims to VACUUBRAND and if the Factor transfers payments received directly to VACUUBRAND.
- 5.5 The customer is required to immediately inform VACUUBRAND of any attachments, confiscation or any other disposition of a third party with regard to products

delivered. In case of customer's insolvency or if any monetary instrument should be returned to VACUUBRAND for insufficient funds, customer shall lose all rights as per clauses 5.2 and 5.3 above.

6 Installation

- 6.1 If VACUUBRAND has agreed to perform installation, costs of work performed will be invoiced monthly and payments are due immediately. Customer is not entitled to hold back payment until completion or final acceptance unless agreed so in writing. Lump sums for installation include only detailed work to be agreed upon in writing.
- 6.2 The customer has to provide free of charge: Appropriate working environment, including lighting, power, compressed air, water, welding power, heating including the necessary supply points; any necessary equipment for lifting or raising electrical power supply and power points for our products, lockable rooms or cabinets to store material, tools and clothes prior and during the installation period.

7 Warranty, damages, supply of spare parts

- 7.1 VACUUBRAND is liable only that products including installation is free of defects at the transfer of risk. Only qualities, properties, performance or other features shall be binding if VACUUBRAND has expressly warranted them in writing to the customer. Details in advertisements and instructions for use, or reference to industrial standards shall not constitute warranted qualities or the taking-on of particular obligations. If the customer requires the products for special purposes which exceed the agreed or anticipated use, he must check before use if the products are suitable for such purposes - including all aspects pertaining to product safety - and customer is required to ensure that products comply with all relevant technical, legal and official regulations and requirements. VACUUBRAND shall not be liable for any damages caused to the customer and/or to his property or any subsequent user if such proper verification has not been performed by the customer and proper written authorization was not obtained from VACUUBRAND. If the customer has expressed special requirements regarding materials of construction or design modifications, VACUUBRAND is not liable for testing the suitability or approving the requested material or design and is therefore not responsible for any examination as to suitability, worthiness or appropriateness for any particular application.
- 7.2 VACUUBRAND's liability is limited to deferred fulfillment of the contract. Subject to VACUUBRAND's disposal deferred fulfillment will be repair of defaults or supplying a product free from defects. Further claims may only be raised if VACUUBRAND refuses to perform as stated above or if VACUUBRAND fails to repair or replace or if it becomes impossible to repair or replace the defective product. In case the customer has transferred the products after delivery to another place which results in additional expenses to repair or replace - e. g. freight, travel expenses a. s. o. - the customer has to bear the additional costs.
- In case a product should prove to be defective as per the a.m. warranty within one year from date of shipment to the original purchaser, the exclusive remedy of the customer is the replacement or repair (at VACUUBRAND's sole discretion) of the defective product.
- 7.3 If the products delivered are destined for the customer's business, he shall be obliged to check incoming products as to quantity delivered and defects and report claims to VACUUBRAND within one week from delivery. Failure to do so will void any and all potential claims for warranty for these defects.
- 7.4 VACUUBRAND is not liable for any damages following improper use or handling. All wearing parts (e.g. pistons, seals, diaphragms, valves and oil) as well as breakable material like glass and ceramic are excluded from any warranty. Any and all warranties are null and void if the products have been processed, consumed in any way, or maintained by the customer or by third parties.
- 7.5 In case customer is using the product in contact with hazardous, toxic, radioactive, environment damaging or any other dangerous substances, law and regulations will require a decontamination of the product and a safe disposal of the hazardous material usually at the customer's premises prior to any repair or replacement of the product. Prior to any return shipment, customer shall be obliged to clean and decontaminate the products and bear the costs for such decontamination.
- 7.6 VACUUBRAND is liable for any damages other than damages to the product only on intent or gross negligence. VACUUBRAND will be liable only if the customer has informed VACUUBRAND before concluding the contract expressly in writing about the possibility of such damages and if VACUUBRAND has agreed to such additional obligations in writing. In so far, liability is limited to typically foreseeable damages.
- 7.7 All claims - except for products which according to their normal use will be used for a building - will be in lapse within one year after delivery of the product to the customer. This also applies to all other obligations and/or for compensation for all damages other than direct damage on the delivered product including property damages.
- 7.8 The warranty period for any replacement parts provided by VACUUBRAND under warranty shall lapse at the end of the warranty period for the original product.

8 Spare parts

VACUUBRAND will generally supply spare parts for a period of 5 years from the date of delivery of the original product. If the spare parts are not manufactured by VACUUBRAND and are no longer available on the market or if the required raw materials are no longer available, VACUUBRAND's obligation to supply spare parts shall lapse.

9 Industrial proprietary rights, secrecy

- 9.1 VACUUBRAND reserves ownership in any tools, moulds, samples, diagrams, commercial or technical documents provided by VACUUBRAND as well as all copyrights, proprietary and intellectual property rights in any such item. This applies also if the customer has partly or wholly borne their costs. The customer may use all such items only in formats approved by VACUUBRAND in writing, he is neither entitled to manufacture these items nor to have them manufactured on his behalf.
- 9.2 The customer is responsible that the use of drawings, models, samples, or instructions as provided to VACUUBRAND by the customer shall not infringe industrial property rights or other rights of third parties. The customer shall be liable for payment of all expenses, awards, damages, and other compensation to outside parties and all cash and non-cash expenses in defending any allegation of such infringement.
- 9.3 All information acquired through the business relationship which is not deemed to be public knowledge shall be deemed proprietary and may not be disclosed to any third parties.

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