

## Terms and Conditions of Sale

### 1. Validity provisions

- 1.1 Except as otherwise agreed in writing, these General Terms & Conditions of Sale of Vibro-Meter SA (herein called "VM"), together with any special conditions of sale set forth in any VM proposal or quotation to which these general terms are attached, shall be the only terms and conditions applicable to the sale of VM manufactured or supplied products or services. Any additional conditions stipulated by the Customer shall only be valid if expressly acknowledged by VM in writing. The Seller will be deemed to have accepted these conditions unless it has stated otherwise in writing within 8 working days of receipt.
- 1.2 A contract of sale on these General Terms and Conditions of Sale is deemed to be entered into upon the Customer's receipt of VM's written acknowledgment of order (herein called "the Contract"). Any amendments to the Contract are effective only when acknowledged by VM in writing.
- 1.3 All tenders, quotations or offers of VM are subject to change at any time prior to VM's acceptance of a purchase order and expire after 30 days or, if specified, at the end of the validity period stipulated in any proposal or quotation.
- 1.4 The assignment of the Contract, or any rights or obligations thereunder by one party without the prior written consent of the other party, shall be void. VM retains the right to substitute a subsidiary or an affiliated company of VM in place of VM as the contracting party and the recipient of payments pertaining to all or any portion of the purchase order. In such cases, the Customer shall be advised thereof in writing. VM may subcontract all or part of the Contract to a third party, provided that it retains responsibility for the Contract.
- 1.5 The Customer can only cancel the Contract (or any part of the Contract) with VM's prior agreement in writing and provided that the Customer indemnifies VM in full for all costs reasonably incurred in respect of the Contract.

### 2. Technical documents & information

- 2.1 Each party to the Contract retains all rights to its plans and technical documents provided to the other. Any drawings or designs which VM may produce for the Contract with respect to the design, manufacture, sale or use of manufactured items thereunder remain the property of VM. Nothing in the Contract shall be deemed to have given the Customer a licence or any other right to use any of the intellectual property rights of VM unless otherwise expressly agreed by VM.
- 2.2 The parties may, for the purpose of the Contract, or during the Contract, disclose to each other knowledge or information which is confidential or proprietary. The party receiving such documents recognizes these rights and shall keep confidential and shall not reproduce nor make these documents available to any other party, either as a whole or in part, nor use them for purposes other than those for which they were disclosed, without the prior written consent of the other party.
- 2.3 Brochures, catalogues, data sheets, etc. provided by VM are for general information only and are not binding on VM. Technical documents and data are binding only when expressly included or referred to in writing in the Contract.
- 2.4 Standard products will conform to the specifications referred to in the Contract. Other products and services will be supplied to the specifications and requirements specifically agreed between the parties and incorporated into the Contract.

### 3. Prices

- 3.1 Unless otherwise agreed upon, the prices are ex works, as per Incoterms 2000, including standard packing, plus applicable sales tax if any. Any special packing requests will be borne by the Customer. All additional charges, such as charges for carriage/freight, insurance, fees for export, transit, import and other permits/certifications, taxes, custom duties and any other fees and charges shall be borne by the Customer. VM reserves the right to adjust the prices or charges for carriage/freight, insurance and other additional costs should the tariffs on which they are based be modified between the time of quotation and delivery.
- 3.2 VM reserves the right to adjust the prices if wage rates and/or the raw material prices vary between the submission of the quotation or proposal and the delivery date and/or if VM is charged with price increases of its subcontractors and/or the nature/scope of the agreed delivery or services has changed. In addition, an appropriate price adjustment shall apply if the delivery time has been extended due to any reason stated in Clause 5.2.

### 4. Terms of payment

- 4.1 Payments shall be made in Swiss Francs or US or Canadian Dollars or Euros or Pounds Sterling at the bank in Switzerland nominated by VM. Company cheques and direct wire transfers are the only acceptable forms of payment. Terms of payment shall be as stated in the Contract and may provide for advance or partial payments with the balance payable upon delivery or readiness for delivery. Unless stated otherwise in the Contract, payment shall be for the full amount without any deduction whatsoever and shall be due thirty (30) days after the date of VM's invoice.
- 4.2 Payment may not be deferred if transport, delivery, commissioning or taking over of the supplies or services is delayed or prevented due to reasons beyond VM's control, or if minor parts are missing, or if post-delivery work is to be carried out without the supplies being prevented from use.

- 4.3 If payments or contractually agreed security for payment are not provided in accordance with the terms of the Contract, VM shall be entitled in its discretion to revise the payment terms with immediate effect, to require security in advance, and/or to suspend performance or terminate the Contract, and shall in either case be entitled to claim damages. If it terminates the Contract, VM will give written notice to the Customer.
- 4.4 If the Customer does not make payment in accordance with the agreed terms of payment, then the Customer shall be liable, without reminder, for interest with effect from the date on which the payment was due at a rate of 1.5% per month on overdue amount. VM reserves the right to claim further damages including debt recovery costs.

### 5. Delivery time

- 5.1 The delivery lead time shall start as soon as the Contract is entered into, all official formalities have been completed, any payments due with the order have been made, any agreed security for payment has been given and the technical specifications are settled. The delivery date shall be deemed to be met when VM sends to the Customer a notice informing it that the goods are ready for dispatch. Compliance with the delivery date is conditional upon the Customer fulfilling its contractual obligations and providing all technical data and other information necessary for VM to perform the Contract.
- 5.2 The delivery time shall be extended:
  - a) If the information required by VM for performance of the Contract is not received in due time, or if the Customer subsequently changes its requirements thereby causing a delay in the delivery of the supplies or services.
  - b) If events of force majeure occur which VM cannot reasonably prevent despite using reasonable care, regardless of whether they affect VM or the Customer or a third party, such events including, but not limited to, epidemics, mobilization, war, revolution, serious breakdown in the works, accidents, labour conflicts, late or deficient delivery by subcontractors of raw materials, semi-finished or finished products, the need to scrap important components, official actions or omissions by any state authorities or public bodies, transport difficulties, natural catastrophes, etc.
  - c) If the Customer or a third party is behind schedule with work it has to execute, or with performance of its contractual obligations, in particular if the Customer fails to observe the terms of payment.
- 5.3 If a delay resulting from any of the foregoing reasons exceeds six months and the parties have not agreed upon a revised basis for continuing the work at the end of the delay, including any adjustment of the price, then either party, upon thirty (30) days written notice, may terminate the performance in respect to the work delayed. If the delay or termination is caused by the Customer's failure, then the Customer shall reimburse VM for all resulting costs and pay for the work already performed.
- 5.4 VM shall be entitled at its discretion to make delivery of the Goods by instalments and to invoice the Customer for each instalment individually.
- 5.5 EXCEPT IN THE CASE OF VM'S WILFUL MISCONDUCT OR GROSS NEGLIGENCE, THE CUSTOMER SHALL HAVE NO OTHER RIGHTS IN THE EVENT OF LATE DELIVERY, UNLESS PREVIOUSLY AGREED IN WRITING, IN PARTICULAR TO CLAIM DAMAGES AND/OR TO CANCEL THE CONTRACT OF SALE.

### 6. Transfer of title and risk

- 6.1 The risk of the supplies shall pass to the Customer when they are delivered ex works, as per Incoterms 2000.
- 6.2 If dispatch is delayed at the request of the Customer or due to reasons beyond VM's control, the risk of the supplies shall pass to the Customer at the time originally scheduled for their leaving the works. From this time on, the supplies shall be stored and insured on the account and at the risk of the Customer.
- 6.3 Title in the supplies will pass to the Customer at the date VM receives the full payment for the relevant supplies.

### 7. Forwarding, transport and insurance

- 7.1 VM shall be notified in due time of special requirements regarding forwarding, transport and insurance.
- 7.2 From the time of dispatch, the Customer shall be responsible for arranging insurance against risks of any kind. If the Customer so requires, VM will arrange transportation and insurance, at the Customer's expense.

### 8. Inspection and acceptance of the supplies and services

- 8.1 In accordance with normal industry practice, VM shall inspect the supplies and services before dispatch. If the Customer requests further testing, this has to be agreed upon in writing and will be conducted at the Customer's expense.
- 8.2 The Customer shall examine the supplies and services within 14 days after receipt and shall within that time notify VM in writing of any deficiencies and/or other complaints. If the Customer fails to do this, the supplies and services shall be deemed to have been accepted.

### 9. Warranty, liability for defects

- 9.1 VM warrants, that subject to the other provisions of this clause 9, the supplies are free from defects due to faulty design by VM, or faulty materials and workmanship, and service is performed with reasonable skill and care.
- 9.2 Unless otherwise agreed and confirmed in writing, the warranty period for supplies is 18 months from the date on which the supplies leave the VM works, or, if earlier, 12 months from the date on which the supplies are put

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into operation. The warranty period for service is 6 months from the date when the service has been performed. If dispatch is delayed due to reasons beyond VM's control, the warranty period shall end no later than 18 months after VM's notification that the supplies are ready for dispatch.

For replaced or repaired parts or re-work the warranty period is extended for the period from the date on which the Customer notifies a valid warranty claim until the replacement or re-worked supplies are returned to the Customer.

The warranty does not apply if the Customer or a third party undertakes modifications or repairs not authorised by VM or if the Customer, in case of defect, does not immediately take appropriate steps to mitigate the damage and give VM the possibility to remedy such defect.

- 9.3** Upon written notification by the Customer, VM undertakes at its choice to repair, replace or re-work as quickly as possible any parts of the supplies or service which, before the expiry of the guarantee period, are proved to be defective due to bad material, faulty design of VM, or poor workmanship. Defective parts shall be returned to VM's works and if replaced, shall become VM's property.
- 9.4** VM will bear or reimburse the costs of packing and transportation of defective supplies returned to VM if accepted by VM as a valid warranty claim. VM shall bear only the cost of remedying the defective parts in VM's supplies or service at VM's work.
- 9.5** Excluded from VM's warranty and liability for defects are all defects which cannot be proved to have their origin in bad material, faulty design or poor workmanship, e.g. those resulting from normal wear and tear, improper maintenance, failure to observe the operating instructions, excessive loading, use of any unsuitable material, influence of chemical or electromagnetic action, unsatisfactory building or installation work, force majeure or other reasons beyond the control of VM.
- 9.6** For supplies and services of subcontractors used by VM or requested by the Customer, VM warrants the supplies and services and liability for defects only to the extent of such subcontractor's warranties and liability obligations.
- 9.7** ALL OTHER WARRANTIES IMPLIED BY LAW ARE EXCLUDED TO THE EXTENT PERMITTED BY LAW. THE CUSTOMER SHALL HAVE NO RIGHTS OTHER THAN THOSE SET OUT IN THIS CLAUSE 9 IN THE EVENT OF DEFICIENCIES IN THE GOODS DELIVERED, IN PARTICULAR TO CLAIM DAMAGES AND/OR TO CANCEL THE CONTRACT.

### 10. Software products

- 10.1** In case of software products, the Customer is granted a free of charge non-exclusive, non transferable licence to use the software on the system specified in VM's acknowledgement of order. The licence is revoked with immediate effect if it not used in accordance with the Contract.
- 10.2** VM warrants that upon customer receipt of the software and for a period of 12 calendar months thereafter, (i) the software shall substantially conform to the specifications in the documentation when properly installed and configured on the computer, and (ii) the media upon which the software is furnished by VM will be free of defects in material and workmanship under normal use. Due to the complex nature of the software products, VM does not guarantee that, (i) the software and any related updates will be completely free of minor defects, (ii) the software will satisfy all customer requirements, or (iii) the use of the software will be totally uninterrupted.
- VM's sole obligation under this warranty shall be limited to exercise reasonable efforts to remedy any non-conformability of the software and/or media and to supply correct version of such software as soon as practicable after the non-conformability has been notified. The warranty period is extended for the period from the date on which the Customer notifies a valid warranty claim until the corrected software and/or media is returned to the Customer.
- 10.3** Any software agreement stipulated in writing shall apply to software products in addition to these General Terms and Conditions of Sale.

### 11. Third party claims

VM CARRIES PRODUCTS LIABILITY INSURANCE AT LEVELS STANDARD TO ITS INDUSTRY. IN THE EVENT OF A THIRD PARTY CLAIM FOR PERSONAL INJURY OR DAMAGE TO PROPERTY ARISING FROM ITS NEGLIGENCE, VM WILL BE LIABLE, AND WILL HOLD THE CUSTOMER HARMLESS, UP TO THE AMOUNT OF ITS INSURANCE COVER. THE CUSTOMER MUST TAKE ALL REASONABLE ACTIONS TO MINIMISE THE RISK AND MITIGATE THE EFFECTS OF SUCH CLAIMS.

### 12. Exclusion of liability

- 12.1** ANY RIGHTS AND CLAIMS OF THE CUSTOMER OTHER THAN THOSE EXPRESSLY STIPULATED IN THESE TERMS AND CONDITIONS OF SALE ARE EXCLUDED, IRRESPECTIVE OF THE GROUND ON WHICH THEY ARE BASED, INCLUDING CLAIMS FOR DAMAGES, REDUCTION OF PRICE OR TERMINATION OF THE CONTRACT OF SALE. THIS EXCLUSION OF LIABILITY, HOWEVER, DOES NOT APPLY TO WILFUL MISCONDUCT OR GROSS NEGLIGENCE ON THE PART OF VM.

IN NO CASE WHATSOEVER SHALL VM BE RESPONSIBLE FOR DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOSS OF PRODUCTION, LOSS OF USE, LOSS OF ORDERS OR LOSS OF PROFIT, OR ANY INDIRECT OR CONSEQUENTIAL LOSS.

### 13. Right of recourse of VM

If, through actions or omissions of the Customer or of persons employed or appointed by the Customer to perform any of its obligations, personal injury or damage to the property of third parties occurs and if a claim is made against VM, then VM shall be entitled to take recourse against the Customer.

### 14. Breach of contract and insolvency

- 14.1** VM may, as it thinks fit, (without prejudice to any other rights or remedies it may have against the Customer) immediately suspend further performance of the Contract or cancel any outstanding provision of the Services or delivery of the Goods or stop any Goods in transit or by notice in writing to the Customer terminate the Contract without liability to VM if :
- The Customer commits any breach which is incapable of remedy ; or fails to remedy a breach of its obligations under the Contract (except as to payment) which is capable of remedy having been requested in writing by the Company to remedy or desist from such breach within a period of 14 days ;
  - Any sum payable under the Contract is not paid in accordance with the Contract ;
  - Suffers any event of insolvency or has a receiver appointed, or any analogous event occurs ; or
  - VM reasonably believes that any of the events specified above is about to occur in relation to the Customer.
- 14.2** Notwithstanding any such termination or suspension, the Customer shall pay VM at the Contract rate for all goods delivered or services provided up to and including the date of suspension or termination. VM may also levy a reasonable cancellation charge for any goods that the Customer has ordered which are in the process of being manufactured or are awaiting delivery to the Customer. The termination of the Contract or any purchase order for whatever reason shall not affect the rights or remedies of either party in respect of any antecedent breach or in respect of any such owing or to become owing to the other.

### 15. Jurisdiction and applicable law

- 15.1** THE CONTRACT SHALL BE GOVERNED BY SWISS LAW.
- 15.2** THE PLACE OF JURISDICTION FOR ANY DISPUTES CONNECTED WITH THIS CONTRACT SHALL BE FRIBOURG, SWITZERLAND, EXCEPT THAT VM SHALL HAVE THE RIGHT TO BRING CLAIMS IN THE COURTS OF THE DOMICILE OF THE CUSTOMER.
- BOTH PARTIES ACKNOWLEDGE THAT THEIR ATTENTION HAS BEEN SPECIFICALLY DRAWN TO THIS CLAUSE.
- 15.3** Unless otherwise agreed and confirmed in writing, the Vienna Convention on Contracts for the International Sale of Goods shall not apply to the Contract of sale.

### 16. General

- 16.1** The information which the parties disclose, and supplies which the parties deliver to each other pursuant to this Contract, may be subject to the provisions of trace compliance regulations (including export and import regulations) of various countries. The parties acknowledge that licenses from the applicable regulatory agency may be required before the parties may disclose or deliver such information and/or supplies hereunder, and that such licenses may impose further restrictions on use and further disclosure of such information and/or supplies. The parties agree to comply with all applicable governmental regulations as they relate to the import, export and re-export of information and/or supplies under this Contract. Each party shall indemnify and hold the other party harmless to the full extent of any loss, damage or expense, excluding loss of profit, for any failure of the other party to comply with such laws and regulations.
- 16.2** The waiver by either party of any breach of the Contract shall not prevent the subsequent enforcement of that breach and shall not be deemed to be a waiver of any subsequent breach of that or any other term.
- 16.3** If at any time any one or more of the terms of the Contract (or any subparagraph or any part of one or more of these Conditions) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from the Contract and the validity and/or enforceability of the remaining provision of the Contract shall not in any way be affected or impaired as a result of that omission. The parties to the Contract shall jointly seek an arrangement having a legal and economic effect which will be as similar as possible to the invalid provision.
- 16.4** The Contract sets out the entire agreement and understanding between the Customer and VM in connection with the sale of the goods and provision of the services and shall supersede and replace all documentation previously exchanged or delivered by the parties purporting to set out its terms and conditions of sale of the goods.

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