



MULTIVAC

GENERAL CONDITIONS OF SALE AND DELIVERY

1 General

- 1.1 The contract shall be deemed to have been entered into upon receipt of the written acknowledgement (order acknowledgement) of MULTIVAC EXPORT AG or MULTIVAC SEPP HAGGENMÜLLER GMBH & CO. KG (both hereinafter referred to as «MULTIVAC») stating the acceptance of the order or upon the signing of the delivery contract. The contract shall be binding only upon the MULTIVAC company which signed the order acknowledgement or the contract. Tenders which do not stipulate a time limit for acceptance shall not be binding.
- 1.2 These General Conditions of Sale and Delivery (hereinafter referred to as «GENERAL CONDITIONS») shall be binding if declared applicable in the tender or in the order acknowledgement. Any conditions submitted by the customer which are in contradiction to these GENERAL CONDITIONS shall only be valid if expressly acknowledged by MULTIVAC in writing.
- 1.3 All agreements and legally relevant declarations of the parties to the contract must be in writing in order to be valid.
- 1.4 Should one or more provisions of these GENERAL CONDITIONS be or become invalid for any reason whatsoever, the validity of the other provisions shall remain unaffected. In such case, the parties hereto shall replace the invalid provision with a commercially equivalent and enforceable provision.

2 Scope of Supplies and Services

- 2.1 The supplies and services of MULTIVAC are exhaustively specified in the order acknowledgement or the delivery contract, including any appendices thereto. MULTIVAC shall be entitled, however, to make any changes which lead to improvements, provided such changes do not result in a price increase.
- 2.2 MULTIVAC shall be entitled to make partial deliveries; to the extent thereof, such partial deliveries shall have the effect of an undivided delivery.

3 Drawings and Technical Documents

- 3.1 Unless otherwise agreed upon, brochures and catalogs shall not be binding. Data provided in technical documents shall be binding only to the extent as expressly stipulated.
- 3.2 MULTIVAC retains all rights to drawings and technical documents provided to the customer. The customer recognizes these rights and shall neither make the documents available to any third party nor use the documents for purposes other than those for which they were handed over.
- 3.3 Any drawings and technical documents provided to the customer by MULTIVAC are to be returned spontaneously and without delay to MULTIVAC if no contract is ultimately concluded.

4 Regulations in Force in the Country of Destination; Safety Devices

The customer shall, at the latest within 14 days after conclusion of the contract pursuant to Clause 1.1, draw the attention of MULTIVAC to the regulations and standards applicable to the execution of the supplies and services (such as, for example, to any installation work), to the operation of the plant as well as the health and safety of personnel.

5 Prices

- 5.1 All prices shall be deemed to be net ex works Wolfertschwenden/Germany (hereinafter referred to as «MULTIVAC FACTORY»), excluding packing, in freely available currency as per separate agreement, without any deduction whatsoever. Any and all additional charges, such as but not limited to, freight charges, insurance premiums, fees for export, transit, import and other permits, as well as for certifications, shall be borne by the customer. The customer shall also bear any and all types of taxes, fees, levies, customs duties and the like which are levied in connection with the contract; should MULTIVAC be held liable for these, the customer shall reimburse MULTIVAC against adequate evidence.
- 5.2 MULTIVAC reserves the right to adjust the price in case the wage rates or the raw material prices vary between the submission of the tender and the time of the contractually agreed performance. In addition, an appropriate price adjustment shall be made if
 - a) the delivery period has been subsequently extended due to any reason stated in Clause 8.3,
 - b) the nature or scope of the agreed upon supplies or services has changed, or

- c) the execution has undergone changes because any document furnished by the customer was not in conformity with the actual circumstances or was incomplete.

6 Terms of Payment

- 6.1 Payments shall be made by the customer at the domicile of MULTIVAC in accordance with the agreed upon terms of payment, without any deduction for a cash discount, expenses, taxes, levies, fees, duties or the like. In the case of partial deliveries, the payment shall be made on a pro rata basis; the paragraph above shall likewise apply. Unless otherwise agreed upon, payment shall be made as follows:

- 1/3 advance payment upon receipt of the order acknowledgement,
- 1/3 as soon as the customer has been informed that the main parts are ready for dispatch, the remainder within one additional month.

At the request of MULTIVAC, the customer shall secure all payments by means of a letter of credit pursuant to ICC directives (ICC publication no. 500) which is confirmed by a Swiss or German bank.

Payment shall be deemed to be effected as soon as the required amount in the agreed upon currency has been transferred to a bank account of MULTIVAC designated in the invoice or the delivery contract or has been made freely available to MULTIVAC.

- 6.2 The due dates of payment shall also be observed if transport, delivery, installation, start-up or acceptance of the supplies or services is delayed or prevented due to reasons beyond MULTIVAC's reasonable control, or if non-essential parts are missing, or if postdelivery work which does not prevent the supplies from being used proves to be necessary. The aforementioned events shall not entitle the customer to any reduction in payment.
- 6.3 The withholding of payments by the customer or a setoff of alleged claims of the customer against the purchase price shall be precluded.
- 6.4 If the advance payment or the contractually agreed upon securities have not been provided in accordance with the terms of the contract, MULTIVAC shall be entitled either to continue or to repudiate the contract and shall, in both cases, be entitled to claim damages. If the customer, for any reason whatsoever, is in delay with a further payment, or if MULTIVAC has reason to believe that it will not receive the payments from the customer in full or on a timely basis due to circumstances which became known after conclusion of the contract, MULTIVAC, without being limited in its rights under applicable law, shall be entitled to postpone the further performance of the contract and to retain the supplies ready for dispatch until new terms of payment and delivery have been agreed upon and MULTIVAC has received adequate security. If such an agreement cannot be reached within a reasonable period of time, or in case MULTIVAC does not receive adequate security, it shall be entitled to repudiate the contract and demand damages.
- 6.5 If the customer is in delay with any payment, it shall be liable, without reminder, for interest with effect as from the agreed date on which payment was due at a rate depending on the interest rates prevailing at the customer's domicile, but not less than 2% above LIBOR. The right to claim further damages is reserved.
- 7 **Reservation of Title**
 - 7.1 MULTIVAC shall remain the owner of all supplies until it has received the agreed upon payments in full.
 - 7.2 The customer shall cooperate in any measures necessary for the protection of MULTIVAC's title; MULTIVAC is authorized to take all measures necessary to protect its title, at the customer's cost, including, in particular, entering or notifying the reservation of title in the required form in public registers, books or similar records, all in accordance with the relevant national laws, and fulfilling all corresponding formalities.
 - 7.3 Furthermore, the customer shall take all measures to ensure that MULTIVAC's title is in no way prejudiced. In particular, in case of seizures or the like, the customer shall assert the title of MULTIVAC, notify MULTIVAC immediately in the quickest possible manner and make available to it copies of all records and documents with respect to such seizure.

8 Delivery Period

- 8.1 The delivery period shall start as soon as the contract has been entered into, all official formalities, such as but not limited to, import, export, transit and payment permits have been obtained, the payments due with the order have been made, any agreed upon security has been provided and all technical issues have been clarified. The delivery period shall be deemed to be observed if, prior to its expiry, the notice to the customer informing that the supplies are ready for dispatch has been sent.
- 8.2 Compliance with the delivery period is conditional upon the customer's compliance with the contractual obligations.
- 8.3 The delivery period shall be reasonably extended if:
- MULTIVAC does not receive on a timely basis the information required to perform the contract, or if the customer subsequently modifies such information, thereby causing a delay in the supplies or services; or
 - hindrances occur which MULTIVAC cannot reasonably prevent, despite use of the required due care, regardless of whether they affect MULTIVAC, the customer or a third party. Such hindrances include but are not limited to: epidemics; mobilization; war; civil commotion; factory breakdowns; late or defective delivery of the necessary raw materials, semifinished products or finished products; accidents; labor disputes; official actions or omissions by governmental or public authorities; natural disasters; and, in general, Force Majeure; or
 - the customer or a third party is behind schedule with work it has to execute, or with the performance of its contractual obligations, including, in particular, if the customer fails to observe the terms of payment.
- 8.4 If delivery is delayed or prevented at the request of the customer or due to events which are not attributable to MULTIVAC, the customer shall be charged for the costs of storage beginning one month after notice has been given that the supplies are ready for dispatch. In the case of storage at MULTIVAC FACTORY, however, at least 1% of the invoice amount for each month shall be charged. The storage shall take place at the risk of the customer. If MULTIVAC sets a reasonable deadline and the deadline expires without being used, however, or if the customer is not prepared to accept the supplies, MULTIVAC shall be entitled to dispose otherwise of the supplies and deliver supplies to the customer pursuant to a reasonable new delivery period.
- 8.5 If a delivery date is agreed upon in lieu of a delivery period, such delivery date is the last day of the delivery period. Clauses 8.1 to 8.4 will apply.

9 Packing

Packing shall be charged for separately by MULTIVAC and shall not be returnable.

10 Passing of Risk

- 10.1 The risk in the supplies shall pass to the customer upon dispatch from MULTIVAC FACTORY.
- 10.2 If dispatch is delayed at the request of the customer or due to reasons beyond MULTIVAC's reasonable control, the risk shall pass to the customer at the time originally foreseen for the dispatch of the supplies ex works. From this moment on, the supplies shall be stored and insured on the account and at the risk of the customer.

11 Shipment, Transport and Insurance

- 11.1 The transport shall take place on the account and at the risk of the customer. MULTIVAC shall be notified on a timely basis as to special requirements regarding shipment, transport and insurance. The customer shall submit objections regarding the shipment or transport to the last carrier immediately upon receipt of the supplies or the shipping documents.
- 11.2 The customer shall be responsible for insuring against damages in transport of any kind. The insurance will be on the account and at the risk of the customer even if, based on a special agreement, the insurance is to be effected by MULTIVAC.

12 Inspection and Acceptance of the Supplies and Services

- 12.1 The supplies and services will be inspected at MULTIVAC FACTORY prior to shipment. Any further testing requested by the customer must be specially agreed upon and paid for by the customer.

- 12.2 Any acceptance tests requested by the customer must be agreed upon in writing. If the acceptance tests cannot be carried out within the agreed upon period due to reasons beyond MULTIVAC's reasonable control, the characteristics and levels of performance to be established by these tests shall be deemed to exist.

- 12.3 The customer shall inspect the supplies and services within a reasonable period and immediately notify MULTIVAC in writing in case of any deficiencies. Should the customer fail to do so, the supplies and services shall be deemed to have been accepted.

13 Warranty, Liability for Defects

- 13.1 The warranty period shall be six months from the delivery ex works MULTIVAC FACTORY, but no longer than nine months from readiness for dispatch if delivery is delayed due to reasons beyond MULTIVAC's reasonable control. The warranty shall expire prematurely if the customer or a third party undertakes inappropriate modifications or repairs or if the customer, in the case of a defect, neither does not immediately take all appropriate steps to mitigate the damages nor gives MULTIVAC the opportunity to remedy such defects.
- 13.2 Upon written request of the customer, MULTIVAC undertakes, at its option, to repair or replace as quickly as possible any parts of the supplies which, before the expiry of the warranty period, are proven to be defective or unusable due to bad material, faulty design or poor workmanship. Replaced parts shall become the property of MULTIVAC.
- 13.3 Any express warranty as to performance and/or use characteristics given by MULTIVAC shall be legally binding only if agreed in writing and installation is carried out by MULTIVAC or takes place under MULTIVAC's supervision. Such warranties shall be subject to a reasonable tolerance.
- 13.4 Excluded from warranty and liability for defects of MULTIVAC are all deficiencies which cannot be proven to have resulted from 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 use, use of unsuitable consumables, chemical or electrolytical influences, construction or installation work not undertaken by MULTIVAC, or resulting from other circumstances beyond MULTIVAC's reasonable control.
- 13.5 With respect to supplies and services provided by subcontractors requested by the customer, MULTIVAC assumes warranty and liability for defects only to the extent of such subcontractors' warranty and liability obligations in relation to MULTIVAC.
- 13.6 ANY WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND IN LIEU OF ANY OTHER EXPRESS, IMPLIED, ORAL OR WRITTEN WARRANTY INCLUDING THOSE OF FITNESS FOR PURPOSE AND MERCHANTABILITY.

14 Exclusion of Further Liability on the Part of MULTIVAC

All cases of breach of contract and the legal consequences thereof and all claims of the customer, regardless of the legal ground on which they are based, shall be governed exclusively by these GENERAL CONDITIONS. In particular, any claim for damages, reduction in price, or revocation or cancellation of the contract which is not expressly mentioned herein shall be precluded. In no event shall MULTIVAC be liable for indirect or consequential loss, such as but not limited to loss of products, production, use, orders, profit or assets.

15 Right of Recourse of MULTIVAC

MULTIVAC shall have a right of recourse against the customer if personal injury or damage to the property of third parties result due to actions or omissions on the part of the customer or persons employed or appointed by the customer to perform any of the customer's obligations and a claim is made against MULTIVAC based on this ground.

16 Jurisdiction and Applicable Law

- 16.1 **The exclusive place of jurisdiction for both the customer and MULTIVAC shall be at the registered office of MULTIVAC, at CH-6331 Hünenberg. MULTIVAC, however, shall be entitled to sue the customer at the latter's registered office.**
- 16.2 The contract shall be governed by Swiss law. However, the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 shall not apply.