

## General Terms and Conditions for the Business Market of Association VACO

### Article 1: definitions/general

- a. The general terms and conditions apply to the formation, content and performance of all agreements between a VACO supplier and the buyer/client who acts for purposes that fall within the scope of their business or professional activity.
- b. General (purchase) conditions of the buyer/client do not apply, unless explicitly agreed otherwise in writing.
- c. If any provision in these general terms and conditions is null and void or annulled, the other provisions will continue to apply and the parties will replace the null and void or annulled provision with a provision that comes closest to it.
- d. In these general terms and conditions, the terms below have the following meanings:
  - general terms and conditions: the VACO general terms and conditions for the business market;
  - VACO supplier: any company recognised as a member by *Vereniging VACO* that applies the general terms and conditions to its transactions;
  - buyer: the person who purchases one or more items from the VACO supplier for purposes that fall within the scope of their business or professional activity;
  - client: the person who places an order with the VACO supplier for purposes that fall within the scope of their business or professional activity;
  - order: the agreement concluded with the VACO supplier for the performance of work, including the assembly, service, repair, maintenance and testing of vehicles.

;

### Article 2: offer, agreement

- a. All offers by the VACO supplier for prices, delivery time, duration and versions are without obligation. Each offer is made on the basis of the prices and versions applicable at that time. In the event of subsequent general price increases or other changes, the offer is withdrawn.
- b. Quotations made by the VACO supplier apply to delivery ex warehouse or place of business of the VACO supplier, unless agreed otherwise in writing. Quotations are exclusive of VAT, levies, waste management contributions, transport costs, packaging and insurance, unless agreed otherwise in writing.
- c. Except in the event of cash payment, a contract between the VACO supplier and a buyer/client is concluded after the VACO supplier has confirmed the purchase order in writing or has commenced delivery or work.
- d. Price changes due to, for example, changes in factory or importer prices and/or exchange rates may be passed on in the selling price. If price changes occur within three months after the conclusion of the agreement, the buyer has the right to annul the agreement within one week of learning of the change. If price changes occur in the event of a delivery time of more than three months, the buyer will not have the right to annul the agreement.
- e. Price changes resulting from laws or regulations, such as taxes, levies and waste management contributions, do not entitle the buyer to annul the contract.

### Article 3: delivery and performance

- a. Delivery times and other dates specified by the VACO supplier are indicative and will under no circumstances be regarded as deadlines within the meaning of Section 6:83(a) of the Dutch Civil Code, unless expressly otherwise agreed in writing. If the estimated delivery time is exceeded, the buyer may give the VACO supplier notice of default by registered letter, allowing a reasonable period within which the VACO supplier may still fulfil its obligations without becoming liable for compensation. A reasonable period is a period of two months after expiry of the specified delivery time.
- b. As soon as goods are ready for collection from or delivery by the VACO supplier or the work arising from the order has been completed, the goods will be deemed delivered or the order completed.
- c. The buyer is obliged to accept a delivery at an earlier time than specified by the VACO supplier. The VACO supplier may make partial deliveries and invoice for them separately. Partial deliveries cannot be annulled if it later transpires that the complete order cannot be delivered.

- d. If the offer does not specify a set price for the work to be performed and the costs exceed the estimate by more than 10%, the VACO supplier will discuss the higher increase in costs with the client, who will be entitled to cancel the order, provided that the client pays costs previously incurred by the VACO supplier for the work performed.
- e. If the client fails to collect the vehicle within three working days of receiving notification that the work on the vehicle has been completed, the client will also owe reasonable compensation for storage and administration costs to the amount of €25 per day.

#### **Article 4: cancellation**

- a. The buyer or client will be entitled to cancel the agreement in writing until the time of delivery or until the start of the performance of the work, even if the VACO supplier is not in default.
- b. The buyer or client will compensate the VACO supplier for all damage due to cancellation. This damage is set at 15% of the purchase price or agreed costs of the order, unless the parties have agreed otherwise in writing.
- c. The buyer or client will pay the VACO supplier for the damage within 10 days of the cancellation. If the damage is not paid within this period, the buyer or client must still comply with the agreement and cannot invoke cancellation again.

#### **Article 5: force majeure**

- a. In addition to what force majeure means in law and case law, it means all external causes that impede the normal performance of an obligation on which the VACO supplier cannot exercise any influence, regardless of whether this circumstance could have been foreseen when the agreement was concluded. Such causes include strikes, general lack of raw materials, unforeseeable delays at suppliers or other third parties on which the VACO supplier depends, government measures, general energy supply failures and general transport problems.
- b. The VACO supplier may also invoke force majeure if the circumstance impeding (further) performance occurs after the VACO supplier should have fulfilled its obligation.
- c. In the event of permanent force majeure, the VACO supplier will be entitled to annul the agreement in writing without becoming liable for compensation.
- d. During the period of temporary force majeure, the VACO supplier's delivery and other obligations will be suspended without judicial intervention and the delivery period will be extended by the period of temporary force majeure. If the period of force majeure lasts longer than 3 months, both parties can annul the agreement, subject to Article 5(e), without becoming liable for compensation to the other party.
- e. If the VACO supplier has already partially fulfilled its obligations or can only partially fulfil its obligations when the force majeure arises, the VACO supplier may invoice separately for the part already delivered or deliver and invoice for the part to be delivered. The above does not apply if the part already delivered or deliverable has no value on its own.

#### **Article 6: risk, retention of title and possessory lien**

- a. The buyer/client bears the risk of all damage that may be caused to or by the delivered goods and/or services from the moment of delivery. The person who is responsible for organising the transport bears this risk from the moment the transport commences, and has the obligation to take out satisfactory insurance for the risk referred to.
- b. The buyer is obliged to insure delivered goods from delivery until the time of full payment at their own expense against the usual risks and to keep them insured under normal conditions with a reputable insurance company.
- c. All goods delivered and yet to be delivered under a specific agreement remain the exclusive property of the VACO supplier until all amounts owed to the VACO supplier by the buyer have been paid in full, including the interest and costs referred to in Section 3:92(2) of the Dutch Civil Code. This means that paid goods will not become the buyer's property until the buyer has paid all that they owe the VACO supplier, i.e. including any outstanding amounts of invoices other than those on which goods still held by the VACO supplier have been invoiced.
- d. If the buyer fails to fulfil its payment obligations on time, the VACO supplier may annul the purchase agreement without notice of default or judicial intervention being required and without becoming liable for compensation, and take back the delivery, to which end the buyer will grant the VACO supplier free access to the delivered goods.

- e. As long as the title to the delivered goods has not been transferred to the buyer, the buyer is not allowed to pledge the goods or establish any other security right on these goods. The buyer may alienate goods from the VACO supplier in the normal course of its business.
- f. Goods present on the buyer's premises and included in the VACO supplier's regular delivery programme will be deemed to come from the VACO supplier, unless the buyer proves that the goods come from another party (subject to proof to the contrary).
- g. Until the buyer or client has paid the VACO supplier all amounts due under an agreement, the VACO supplier may retain possession of the buyer's goods and recover any amounts due from these goods, unless the buyer has provided sufficient security for these amounts due.

#### **Article 7: payment**

- a. Unless agreed otherwise, all deliveries will be made on cash or advance payment. If the parties agree otherwise, payment will be due within 14 days of the invoice date, and the parties may also agree on another due date. The applicable due date is always a deadline.
- b. All costs associated with payment are payable by the buyer or client. Payments first serve to reduce the costs, then to reduce the interest due and finally to reduce the principal and the accrued interest. If the principal consists of several invoices, payment will be attributed to the oldest invoice or invoices due and payable, regardless of the invoice numbers that the buyer or client allocates to the payment.
- c. If the buyer or client fails to make payment by the due date, they will be in default without further notice of default. In the event of default, 1% interest per month or part thereof will be due on the principal. In the event that the statutory interest rate under Section 6:119a of the Dutch Civil Code or Section 6:119 of the Dutch Civil Code should be higher, this higher statutory interest will be due.
- d. If the buyer or client fails to fulfil its payment obligations, all costs reasonably incurred by the VACO supplier to obtain payment out of court will be payable by the buyer or client. The extrajudicial collection costs are set at 15% of the principal, unless the buyer or client demonstrates that the VACO supplier suffers less damage.
- e. If the VACO supplier holds the buyer or client liable in court for payment or otherwise for compliance with the agreement, the buyer or client will be obliged to pay all costs actually incurred by the VACO supplier in connection with the legal proceedings, such as the costs of legal assistance, attachment and court fees if the VACO supplier wins the case in whole or in part.

#### **Article 8: conformity**

- a. The VACO supplier will perform the agreement to the best of its knowledge and ability and to a high standard. The buyer or client will be obliged to examine immediately after delivery whether the VACO supplier has properly performed the agreement and to notify the VACO supplier in writing within a reasonable period of time, within 10 working days of delivery at the latest, if the agreement has not been properly performed (due date). If notification within this period is not reasonably possible, the deadline will be 10 working days from the moment the defect is discovered or could have been discovered. Complaints do not entitle the buyer or client to suspend payment. In the event of the balancing of tyre-wheel combinations and/or alignment of a vehicle, it is immediately clear whether or not this task has been carried out correctly; such orders will be deemed to have been carried out properly if no complaint is filed with the VACO supplier within three days of delivery of the vehicle to the buyer (due date).
- b. In the event of complaints filed in good time as referred to in Article 8(a), the buyer or client will give the VACO supplier the opportunity to investigate the merits of the complaint. If the complaint is justified, the buyer or client will grant the VACO supplier a reasonable period of time to repair or replace the item delivered or the work performed.
- c. The agreement will also be deemed to have been properly performed if the buyer or client has failed to carry out the investigation or give notice as referred to in Article 8(a) on time. If the buyer has signed for correct receipt upon delivery, the right to complain about the quantity and visible damage of the goods received lapses. No rights can be derived from any apparent typesetting, printing or writing errors in catalogues or price lists.

- d. The VACO supplier guarantees both the soundness of the goods it delivers in relation to the amount of the price and the quality of the service, except if:
  - the buyer or client has not followed any instructions or regulations given by the VACO supplier or its supplier;
  - the goods are used for purposes other than normal;
  - defects are the result of normal wear and tear or normal use;
  - assembly, repair or modification of the item is carried out by third parties on the instructions of the buyer or client;
  - a government regulation determines the nature or quality of materials used;
  - the buyer or client supplies materials or goods to the VACO supplier for processing;
  - materials, goods and working methods are applied on the express instructions of the buyer or client.
- e. If the VACO supplier replaces goods, the replaced goods will become its property. If the buyer has already put the goods into use, the VACO supplier will be entitled to charge the buyer a user fee. This fee relates to the period during which the item has been in use by the buyer or a third party and is in the same proportion to the purchase price as the period of use up to the normal life span.

#### **Article 9: liability**

- a. The VACO supplier's total liability will be limited to repair, replacement or cancellation of the agreement. The VACO supplier will not be liable for any further compensation (no compensation for consequential loss). Warranty claims made by third parties (manufacturer or importer) are assumed by the buyer.
- b. The VACO supplier, its employees and third parties engaged by it will not be liable for any damage to persons, property or to the business of the buyer and/or third parties resulting from defects in goods delivered and/or orders carried out by the VACO supplier, except in the event of intent or wilful recklessness.
- c. The buyer or client will indemnify the VACO supplier against claims from third parties arising from a shortcoming in the goods delivered or services rendered.
- d. The VACO supplier's liability will also be limited to the amount of the payment made by the insurance, insofar as the liability is covered by the insurance. If in any situation the insurance does not provide cover or does not pay out, the VACO supplier's liability will be limited to the invoice value of the item and/or service in question.
- e. In the event of damage caused by a defect in the delivered item which it has not produced itself or has imported into the EU, the VACO supplier will give the buyer the address of its supplier, producer or importer in the EU within a reasonable period of time. If the VACO supplier is unable or no longer able to provide this information, or if it has produced the item itself or imported it into the EU, the VACO supplier's liability will not extend beyond the scope to which it is bound by law (Sections 6:185-193 of the Dutch Civil Code) and the provisions of Article 9(a).

#### **Article 10: suspension and cancellation**

- a. The VACO supplier will be entitled to suspend the fulfilment of its obligations or to annul the agreement without becoming liable for compensation if:
  - the buyer or client does not fulfil their obligations under the agreement or does not do so on time or in full;
  - after the conclusion of the agreement, the VACO supplier has reason to fear that the buyer or client will not be able to fulfil its obligations or to do so on time or in full;
  - the buyer is obliged to provide sufficient security for performance upon conclusion of the agreement and this security is not provided or is insufficient in the VACO supplier's opinion;
  - such unforeseen circumstances occur that performance of the agreement by the buyer or client is impossible, such as in the event of insolvency, or at least such unforeseen circumstances that, by the standards of reasonableness and fairness, unaltered compliance with the agreement cannot be demanded of the parties.
- b. Upon annulment of the agreement, all amounts owed by the buyer will become immediately exigible and the VACO supplier will retain its claims for full compensation.

**Article 11: personal and vehicle data**

- a. By entering into an agreement, the buyer or client will provide the VACO supplier with personal data, including name, address, telephone number and email address. This personal data is processed in accordance with the General Data Protection Regulation (GDPR). On the basis of this information, the VACO supplier can:
  - perform the purchase agreement or order and provide optimal service;
  - where there is a legitimate interest, provide the buyer or client with product information and make personalised offers;
  - store vehicle data, such as vehicle registration number and mileage to prevent fraud.
- b. The buyer or client will at all times have the right to inspect their personal data, which will be sent by the VACO supplier within 14 days of a request to do so, and will be modified or deleted at the buyer's or client's request, subject to statutory regulations. The privacy statement posted on the VACO supplier's website will also apply.
- c. For work performed on passenger cars and light commercial vehicles (<3,500 kg), the VACO supplier will report to the *Rijksdienst voor het Wegverkeer (RDW: Dutch Government Road Transport Agency)*, partly in order to comply with laws and regulations, stating vehicle details (including registration number, entry code, mileage and points of advice).

**Article 12: applicable law and disputes**

- a. All agreements concluded with the VACO supplier are governed by Dutch law. The applicability of the CISG or Vienna Sales Convention is excluded.
- b. Unless mandatory provisions dictate otherwise, any disputes arising from agreements with the VACO supplier will be brought before the Dutch Court in the district where the VACO supplier has its registered office.

**Article 13: final provisions**

- a. The VACO supplier is entitled to amend these general terms and conditions.
- b. Amendments to these terms and conditions will only be effective after they have been published in the appropriate manner. In the event of any amendment to the general terms and conditions during the term of an offer, the provision that is most favourable to the buyer will take precedence.