

# General Terms and Conditions of Sale and Supply

## I. Proposal

In the absence of any separate contractual agreements, Pfeiffer Vacuum, as the supplier, shall effect deliveries and provide services exclusively under the terms and conditions set forth herein. Under no circumstances shall any contradictory terms and conditions of purchase of Purchaser become a part of the contract – and neither by acceptance of an order –, even if not expressly refuted. These General Terms and Conditions of Sale and Supply shall apply to both the present transaction as well as to any and all future business transactions.

## II. Proposal and Contract

The information contained in price lists, catalogs and advertising media relating to Pfeiffer Vacuum's performances shall not represent any proposals. Such documents as illustrations, drawings, weights and measurements pertaining to a proposal shall be subject to change without notice and shall be only approximately definitive, unless they have been expressly stipulated as being binding. Verbal advice, collateral agreements and assurances of whatever nature shall be void unless they have been confirmed in writing by Pfeiffer Vacuum as being agreed. Minor variances from product specifications shall be deemed to have been approved. In the absence of any special agreement, a contract shall only be deemed to have been entered into upon Pfeiffer Vacuum's written confirmation of order or upon delivery of the goods. Pfeiffer Vacuum reserves all ownership rights and copyrights to its samples, cost estimates, plans, drawings and similar information of either a tangible or intangible nature – including information in electronic form –, as well as to any and all other documents; said items shall only be made available to third parties with the written consent of Pfeiffer Vacuum.

## III. Scope of Supply

Pfeiffer Vacuum's written confirmation of order shall be definitive with respect to the scope of and all further details relating to the supply; in the case of a time-limited proposal from Pfeiffer Vacuum and its acceptance by Purchaser within the stipulated term, said proposal shall be deemed to be definitive in the absence of timely confirmation of order by Pfeiffer Vacuum. Any collateral agreements or modifications shall require written confirmation by Pfeiffer Vacuum.

## IV. Prices and Payment

1. Prices shall be either ex works or ex consignment warehouse, including loading at the factory or consignment warehouse, however exclusive of packing materials and statutory value added tax. Pfeiffer Vacuum shall be entitled to invoice packing materials at cost and reserves the right to require return of its transport packing materials free of charge, provided said packing materials have been delivered free of charge by Pfeiffer Vacuum. No credit shall be given for returned packing materials.

2. In the absence of any special agreement, payment shall be made in cash at Pfeiffer Vacuum's payment office, with no deductions. The following payment terms shall be applicable with respect to systems and plants:

30 % advance payment upon receipt of the confirmation of order

40 % as soon as Purchaser has been notified that the major components are ready for shipment

20 % upon delivery

and the remainder within a period of one month subsequent to passage of the risk.

3. Purchaser shall only be entitled to withhold payments or set them off against any counterclaims if said counterclaims are undisputed or have become legally final.

4. The minimum order value shall be to € 100.00.

5. Should the goods be returned, Pfeiffer Vacuum shall invoice the required functional testing and refurbishment at a rate of 10% of the net value of the goods, however not less than € 100.00.

6. In the event of cancellation of an order, Pfeiffer Vacuum shall fundamentally charge a cancellation fee in the amount of 15% of the total value of said order. Cancellation shall be made in writing and shall only be possible with 14 days subsequent to our confirmation of order.

## V. Delivery Term / Delayed Delivery

1. The delivery term shall be based upon the agreements reached between the contracting parties. Compliance with the delivery term by Pfeiffer Vacuum shall necessitate that all commercial and technical questions between the contracting parties have been clarified and that Purchaser has satisfied all of its obligations, e.g. submittal of the documents, approvals or releases to be procured by Purchaser, or that an agreed advance payment has been made. Should this not be the case, the delivery term shall be appropriately extended. This shall not apply to the extent that Pfeiffer Vacuum is responsible for said delay.

2. Compliance with the delivery term shall be subject to correct and timely delivery of raw materials and supplies to Pfeiffer Vacuum.

3. The delivery term shall be deemed to have been observed if the supplied items have left Pfeiffer Vacuum's factory or notification of readiness for shipment has been made prior to the expiration of the delivery term. Should acceptance testing be required, the date of the acceptance testing – with the exception of justified refusal to perform said acceptance testing – shall be definitive, or alternatively notification of readiness for acceptance testing.

4. Should shipment or acceptance testing of the supplied item be delayed due to reasons for which Purchaser is responsible, Purchaser shall be charged for the costs incurred as a result of said delay, beginning one month subsequent to notification of readiness for shipment or acceptance testing.

5. Should failure to observe the delivery term be caused by force majeure, strikes, lock-outs or other events beyond the control of Pfeiffer Vacuum, the delivery term shall be appropriately extended. This shall also apply if a subcontractor is subjected to such circumstances. Nor shall the above-described circumstances be the responsibility of Pfeiffer Vacuum if they arise during the course of an existing delay. In important cases, Pfeiffer Vacuum shall inform Purchaser as soon as possible of the beginning and end of such hindrances.

6. Purchaser shall be entitled to withdraw from the contract without notice if it has finally become impossible for Pfeiffer Vacuum to provide the entire performance prior to passage of the risk. Furthermore, Purchaser shall also be entitled to withdraw from the contract if the execution of a part of an order has become impossible or if Purchaser has a legitimate interest in refusing partial delivery. Should this not be the case, Purchaser shall pay the contractual price relating to the partial delivery. The same shall also apply in the event of Pfeiffer Vacuum's inability to perform. Apart from this, Point IX. 2 shall apply. Should the impossibility or inability to perform occur during the course of delay in acceptance testing or should Purchaser solely or predominantly be responsible for said circumstances, Purchaser shall be obligated to provide compensation therefor.

7. Should Pfeiffer Vacuum be delayed in making delivery and should Purchaser incur damages therefrom, Purchaser shall be entitled to demand liquidated damages for delayed performance, to the exclusion of any and all further claims. Said liquidated damages shall amount to 0.5% of the invoice amount per full week of delay, however not more than 5% of the value of that portion of the entire delivery that cannot be utilized in a timely fashion or according to the contract as a result of said delay. Any and all further claims arising from the delay in delivery shall be governed exclusively by Point IX. 2. Should Purchaser grant the supplier in delay an adequate term for performance – with due regard to statutory exceptions – Purchaser shall be entitled to withdraw from the contract within the framework of statutory provisions if said adequate term is not observed. At the demand of Pfeiffer Vacuum, Purchaser shall agree to state within an adequate term whether it intends to exercise its right to withdraw from the contract.

8. Should shipment be delayed at the request of Purchaser, Purchaser shall be charged the storage costs incurred therefor, beginning one month subsequent to notification of readiness for shipment; in the case of storage at the Pfeiffer Vacuum factory or consignment warehouse, however, at least 0.5% of the invoice amount for each month. Following stipulation and expiration of an adequate term, Pfeiffer Vacuum shall additionally be entitled to otherwise dispose of the item to be supplied and to effect delivery to Purchaser subject to a reasonable extended term.

## VI. Passage of Risk and Acceptance Testing

1. The risk shall pass to Purchaser at the latest upon shipment of the items to be supplied, even if partial deliveries are made or if Pfeiffer Vacuum has assumed other performances, e.g. shipping costs for delivery and installation. Upon request by Purchaser, Pfeiffer Vacuum shall insure the consignment at Purchaser's expense against theft, breakage, shipping, fire or water damage, as well as any and other insurable perils. Should acceptance testing be performed, the time of said acceptance testing shall be definitive for passage of the risk. Said acceptance testing shall be performed without delay on the date set for the acceptance testing, or alternatively subsequent to notification by Pfeiffer Vacuum of readiness for acceptance testing. The presence of an immaterial defect or deficiency shall not entitle Purchaser to refuse to perform acceptance testing.

2. Should shipment or acceptance testing be delayed or not be performed due to circumstances for which Pfeiffer Vacuum is not responsible, the risk shall pass to Purchaser upon the day that notification of readiness for shipment or acceptance testing is made. Pfeiffer Vacuum shall undertake to obtain the insurance coverages requested by Purchaser at Purchaser's expense.

3. Purchaser shall be required to accept delivered items even in the presence of immaterial defects or deficiencies, without prejudice to the rights set forth in Point VIII.

4. Partial deliveries shall be permissible if not unreasonable for Purchaser.

## VII. Retention of Title

1. Pfeiffer Vacuum shall retain title to the supplied item until any and all payments have been received – including payments for any performances that might additionally be owed – arising from the contract for supply and until such time as payment has been received for any and all claims against Purchaser or members of its corporate group by Pfeiffer Vacuum or members of its corporate group. Should Purchaser be a dealer or a manufacturer, it shall be revocably authorized to incorporate the supplied items within the framework of proper business transactions and/or to process and/or resell said supplied items. Purchaser herewith assigns to Pfeiffer Vacuum its entitlements under

the resale transaction (in the ratio of the value of Pfeiffer Vacuum's goods to the manufacturing costs of the entire product in connection with their incorporation or processing). Should said assignment exceed 120% of the claims secured by it, Pfeiffer Vacuum shall release the collateral at Purchaser's written request.

2. Pfeiffer Vacuum shall be entitled to insure the supplied item against theft, breakage, fire, water or other perils at Purchaser's expense unless Purchaser has evidenced that it has taken out such insurance coverage itself.

3. Purchaser shall not be entitled to either pledge or use as collateral the supplied item. Purchaser shall be required to inform Pfeiffer Vacuum immediately in the event of confiscation or other third-party dispositions.

4. Should Purchaser be in breach of the contract, in particular in the case of payment default, Pfeiffer Vacuum shall be entitled to retrieve the supplied item following issuance of a warning notice, and Purchaser shall be required to surrender said supplied item. Pfeiffer Vacuum's right to assert its right to retention of title or to attachment of the item shall not constitute a withdrawal from the contract on the part of Pfeiffer Vacuum.

5. Petition for the initiation of insolvency proceedings shall entitle Pfeiffer Vacuum to withdraw from the contract and to demand the immediate return of the supplied item.

## VIII. Warranty

Subject to the exclusion of any further claims – and as governed by Point IX – Pfeiffer Vacuum shall warrant against material defects and deficiencies in title as follows:

### Material defects

1. All components that prove to be deficient due to circumstances existing prior to the time of passage of the risk shall be remedied or re-supplied free of charge by Pfeiffer Vacuum at its option. Pfeiffer Vacuum shall be notified of such defects and deficiencies in writing without delay. § 377 of the German Commercial Code ("HGB") shall apply accordingly. Replaced components shall become the property of Pfeiffer Vacuum. In the case of major products from third-party suppliers, Pfeiffer Vacuum's liability shall be limited to assignment of its claims against said third-party suppliers, provided that said claims are not subject to the statute of limitations and are not significantly lower than those claims being asserted by Pfeiffer Vacuum.

2. Following written notification, Purchaser shall provide Pfeiffer Vacuum with the required time and opportunity to remedy any and all defects or effect any and all replacement supplies that Pfeiffer Vacuum shall deem necessary; otherwise, Pfeiffer Vacuum shall not be liable for the consequences thereof. Only in urgent cases endangering operational safety or to prevent unreasonable high damages, whereby Pfeiffer Vacuum shall be notified immediately, shall Purchaser have the right to remedy the defects itself or to have them remedied by third parties, and to demand restitution for the necessary expenses incurred.

3. Of the costs resulting from repair or replacement, Pfeiffer Vacuum – should the complaint prove to be legitimate – shall bear the costs of the replacement item, including shipping (however excluding express deliveries and deliveries to other countries), as well as the reasonable costs associated with removal and reinstallation, as well as the costs of any required provision of Pfeiffer Vacuum's fitters and helpers which may equitably be necessitated on the basis of the individual case in question.

4. Within the framework of statutory provisions, Purchaser shall have the right to withdraw from the contract should Pfeiffer Vacuum – with due consideration being given to statutory exceptions – allow an appropriate term to repair or replace, of which it has been notified in writing, to lapse. In the case of only immaterial defects or deficiencies, Purchaser shall only be entitled to claim a reduction of the contractual price. There shall otherwise be no right to a reduction of the contractual price.

5. No warranty shall be assumed in the following cases, in particular:

**Use of non-genuine Pfeiffer Vacuum parts**, unsuitable or improper use, faulty or defective assembly and/or start-up by Purchaser or by third parties, natural wear and tear, faulty or neglectful treatment, improper maintenance, unsuitable operating fluids, deficient construction work, unsuitable building substrates, chemical, electrochemical or electrical influences that are not the responsibility of Pfeiffer Vacuum.

6. Should Purchaser or a third party improperly remedy any defect, Pfeiffer Vacuum shall not be liable for the consequences resulting therefrom. The same shall also apply with respect to any alterations of the supplied item by Purchaser or third parties without the prior consent of Pfeiffer Vacuum.

### Deficiencies in title

7. Should the use of the supplied item lead to infringement of intellectual property rights or copyrights in Germany, Pfeiffer Vacuum shall at its own expense assure that Purchaser shall fundamentally be given the right of further use or that the supplied item be modified in such a way that can reasonably be expected to be acceptable to Purchaser as to ensure that the infringement of intellectual property rights or copyrights no longer exists. Should this not be possible at economically reasonable terms or conditions or within a reasonable term, Purchaser shall be entitled to withdraw from the contract. Under the above-indicated prerequisites, Pfeiffer Vacuum shall also be entitled to withdraw from the contract. Furthermore, Pfeiffer Vacuum shall save and hold harmless Purchaser against undisputed or legally final claims asserted by the respective owners of intellectual property rights or copyrights.

8. Pfeiffer Vacuum's obligations set forth in Point VIII. 7, as subject to Point IX. 2, shall be definitive in the event of a breach of intellectual property rights or copyrights.

They shall only be applicable if and when

- Purchaser notifies Pfeiffer Vacuum immediately of any asserted claims with respect to the infringement of any intellectual property rights or copyrights
- Purchaser supports Pfeiffer Vacuum to an appropriate extent in connection with defending against the asserted claims or to an extent that will enable Pfeiffer Vacuum to perform the modification measures pursuant to Point VIII. 7
- Pfeiffer Vacuum reserves the right to engage in all defensive measures, including out-of-court settlements
- The deficiency in title is not based upon an instruction on the part of Purchaser, and
- The legal infringement was not caused by the fact that Purchaser has independently modified the supplied item or has used it in a non-contractual manner

## IX. Liability

1. If through the fault of Pfeiffer Vacuum the supplied item cannot be used by Purchaser in accordance with the contract due to neglected or faulty execution in connection with proposals and consultations prior to or subsequent to the execution of the contract or through infringement of other collateral contractual obligations – in particular with regard to instructions for the operation and maintenance of the supplied item – the provisions set forth in Points VIII. d) and IX. 2 shall apply accordingly, to the exclusion of any and all further claims by Purchaser.

2. In the case of damages that are not incurred on the supplied item, itself, Pfeiffer Vacuum shall – for whatever legal reasons – be liable only

- a) In the event of willful intent
- b) In the event of gross negligence on the part of its owner/corporate bodies or executives
- c) In the event of culpable injury to life, limb or health
- d) In the event of defects or deficiencies that Pfeiffer Vacuum has maliciously concealed
- e) Within the framework of an assured warranty
- f) In the event of defects or deficiencies in the supplied item to the extent liability exists under the German Product Liability Act for personal injury or property damage in connection with privately utilized items.

In the event of a culpable infringement of major contractual obligations, Pfeiffer Vacuum shall also be liable in the case of gross negligence on the part of non-executive employees and in the case of minor negligence, however in the latter case limited to typical damage under the contract that could reasonably be foreseen.

No further entitlements shall exist.

## X. Statute of Limitations

Any and all claims on the part of Purchaser – regardless of the legal grounds therefor – shall be subject to a statute of limitations of 12 months. This term shall not recommence for spare or replacement parts supplied within this period; the original warranty term for the supplied item shall instead continue to be definitive.

Claims for indemnification pursuant to Points IX. 2 a) - d) and f), as well as claims under the German Product Liability Act, shall be subject to the statutory terms.

## XI. Use of Software

Should software be included in the scope of supply, Purchaser shall be granted a non-exclusive right to use said supplied software, including the documentation pertaining thereto. Said software shall be provided for utilization on the supplied item for which it is intended. Utilization of the software on more than one system shall be prohibited. Purchaser shall only be entitled to copy, modify, translate or convert the software from object code to source code within the legally permissible scope (§§ 69 a ff. of the German Copyright Law ["UrhG"]). Purchaser agrees to refrain from removing manufacturer's information or Pfeiffer Vacuum's information – in particular copyright notices – or from modifying them without express prior approval from Pfeiffer Vacuum. Any and all other rights to the software and the documentation, including copies thereof, shall remain with Pfeiffer Vacuum and/or the software supplier. The issuance of sub-licenses shall not be permissible.

## XII. Applicable Law/Venue (does not apply to consumers)

1. Any and all legal relationships between Pfeiffer Vacuum and Purchaser shall be subject exclusively to the pertinent laws of the Federal Republic of Germany. This shall also apply with respect to foreign business transactions. The application of the U.N. Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

2. The venue shall be the court having jurisdiction for Pfeiffer Vacuum's domicile. However Pfeiffer Vacuum shall also be entitled to bring action at Purchaser's primary domicile.

**PFEIFFER**  **VACUUM**

Pfeiffer Vacuum · Headquarters/Germany

Tel. +49-(0) 64 41-8 02-0 · Fax +49-(0) 64 41-8 02-2 02 · info@pfeiffer-vacuum.de · www.pfeiffer-vacuum.de