

General Conditions for Delivery

1. Coverage of the General Conditions for Delivery ("GCD")

- 1.1 The GCD, in principle, govern all business relations between **VAPEC** AG ("**VAPEC**") and the customer.
- 1.2 The GCD apply to the delivery of goods only. Possible services of **VAPEC** connected with the delivery are to be executed according to the provisions of GCS (General Conditions for Services) which are attached in Enclosure 1.

2. Realisation of the agreement

- 2.1 An order is always based on a written and detailed offer of **VAPEC**. An order is considered to be given and is binding, as soon as **VAPEC** has confirmed the order in writing and either the arranged first part payment has been made by the customer and is credited to the account of **VAPEC** and/or an agreement on the financing has been reached and/or a promise to pay by a bank has been provided.
- 2.2 At the time of giving the written order, **VAPEC** and the customer agree upon a date of delivery. Delays for delivery begin when the confirmation of the purchase is received by the customer and the settlement of the financial obligations as defined in the confirmation of the order is fulfilled by the customer in due time. Where the payments by the customer happen to be delayed, the date of the delivery is postponed at least in the corresponding extent.

3. Specification and modifications of the delivery.

- 3.1 **VAPEC** in principle carries out the delivery according to the GCD and the written confirmation of the offer by **VAPEC**, which is considered as basis of the conclusion of the agreement.
- 3.2 After the conclusion of the agreement, **VAPEC** is entitled to change specific features of the services and/or assured characteristics such as technical standards, methods of production, adaptation to laws and regulations, etc. without previously informing the customer.
- 3.3 Should the fulfilment of the order becomes difficult and/or restricted, in particular concerning the purchase price and/or the date of delivery, the parties are obliged to sign an appropriate agreement with respect to the changes and to define the required changes in detail and in writing. **VAPEC** is obliged to submit the customer an altered written offer concerning the altered order, pointing out every important change as to technical respects, purchase price and date of delivery. The customer is obliged to counter-sign an appropriate, comparable offer of **VAPEC**.
- 3.4 **VAPEC** is entitled, with the consent of the customer, to have the contractually agreed delivery of the goods/services executed by a professionally qualified sub-contractor and to supervise the execution. If **VAPEC** transfers part or the whole delivery/execution of goods/services according to the agreement to a sub-contractor, **VAPEC** is exclusively liable for the careful choice, instruction and supervision of the sub-contractor.

4. Delivery/Supply

- 4.1 The delivery is executed according to the modalities set forth in the confirmation of the order which are based on the Incoterms 2000.
- 4.2 If the customer accepts a supply at the contractually agreed delivery date but not according to the provisions of the agreement, **VAPEC** is entitled to entrust in the name and on the account of the customer to a carefully chosen, professional haulage contractor. By entrusting a haulage contractor, **VAPEC** has fulfilled its contractual obligations according to the rules. Based on the confirmation of receipt by the haulage contractor, **VAPEC** is entitled to demand payment and/or arrange settlement by the customer as provided by the agreement.

5. Obligations of the customer, date of delivery

- 5.1 The customer is obliged to provide in due time the required permits, licenses, etc. immediately after the written confirmation of the order has been put down and make all preparations within its enterprise as soon as the preconditions for the execution of the order are fulfilled. The customer is obliged to inform **VAPEC** without delay when all conditions agreed upon are fulfilled so that the delivery can be carried out.
- 5.2 If the customer fails to provide the preconditions for the delivery in compliance with the order, the contractually agreed date of the delivery is postponed accordingly and **VAPEC** is entitled to fix an appropriate new date.

6. Conditions of payment

- 6.1 In principal, the conditions of payment set forth in the confirmation of the order apply. If **VAPEC** does not set forth any conditions of payment in the confirmation of the order, the modalities provided in ciph. 6.2 apply.
- 6.2 The customer is obliged to pay into an account determined by **VAPEC** 30% of the agreed quantity of the supplies net plus the legal VAT within 10 days after putting down the written confirmation of the order. Moreover, the customer is obliged to pay 40% of the agreed quantity of the supplies net plus the legal VAT within 10 days after the beginning of the delivery into the account determined by **VAPEC**. The customer is obliged to pay 30% of the agreed quantity of the supplies net plus the legal VAT within 10 days after the approval of the delivery into the account determined by **VAPEC**.
- 6.3 The customer is not entitled to make any deductions for minor defects and/or delay part-payments.

7. Default of VAPEC

- 7.1 **VAPEC** is guilty of not being able to keep the date of delivery agreed upon or if serious defects are discovered resulting from acts for which **VAPEC** is do blame, **VAPEC** is obliged to pay the customer a lump sum default compensation of 0.5% of the agreed quantity of the supplies net plus the legal VAT for the delay of every complete week, maximally, however, 5%. By accepting these GCD the customer agrees that by paying the compensation **VAPEC** has settled all direct and/or indirect default claims of the customer.
- 7.2 The customer is not entitled to claim a default compensation if it is partly or wholly liable for the default.

8. Default of the customer

- 8.1 If the customer does meet the arranged financial obligations in due time or does not meet them within 10 days after being sent a written reminder, **VAPEC** is entitled to claim the total amount which is not yet settled at that moment and to stop executing its services until the customer has paid as provided in the contract. Should **VAPEC** suffer any damage on account of the customer's culpable failure to meet its financial obligations, the customer is obliged to pay all occurring additional expenses of **VAPEC**. Moreover, **VAPEC** is entitled to terminate the agreement and claim compensation.

9. Transfer of risk and danger

- 9.1 For the transfer of the danger of loss and/or damage of the supply the rules of Incoterms apply. If the customer is in default of acceptance, risk and danger, unless arranged otherwise, are transferred to the customer as soon as **VAPEC** entrusts a haulage contractor with the execution of the delivery.
- 9.2 The customer advises **VAPEC** to professionally insure the supply against theft, breakage, water and other damage for the time of the order being confirmed until the receipt of the supply is formally approved, and to bear the costs.

10. Force majeure

- 10.1 If **VAPEC** cannot meet the arranged deadline for the execution of the services or cannot render the contractual services on account of force majeure or not in due time, it is freed from any liability for failure or default in its entirety. Force majeure in the sense of this agreement means that **VAPEC** can in no way be blamed for being unable to execute the contractually arranged services, either partially or wholly, or to be caused by persons to be considered as employed or in another way attached to **VAPEC** suffering from or being exposed to special weather conditions, explosions, war, terrorism and other obstructions, in particular acquisition, export and import restrictions or disturbances, fire, breakdowns of machines, unexpected price increases of materials.
- 10.2 If **VAPEC** bases itself on force majeure, it is obliged to inform the customer in writing and without delay, at the latest within 5 days after having knowledge of the event which frees **VAPEC** from liability. If a contractually provided delivery cannot be executed within 60 days, the parties shall discuss whether or not the ordered services can still be executed and according to what modalities it should be executed by **VAPEC** with the customer. In case Skcraft and the customer consider the execution of the services no longer reasonable, the parties are obliged to examine the consequences of the termination of the order in co-operation with the respective insurance company and to arrange an economically reasonable unwinding of the contract.

11. Transfer of ownership

- 11.1 **VAPEC** remains the owner of the supply until it is fully paid. By handing in the written order, the customer agrees that **VAPEC** obtains the retention of title in the form provided by the law at its own cost.

12. Warranty and liability

- 12.1 **VAPEC** warrants that the supply has the arranged and assured characteristics and is free from serious material and processing defects.
- 12.2 The customer is obliged to examine the supply of **VAPEC** without delay and to reprove in writing possible defects within 7 days from the date of delivery. **VAPEC** is exclusively obliged to repair possible defects which are not caused by normal wear or false manipulation and/or to replace possible defective original parts as well as to render the services connected therewith. The customer is obliged to return original parts at the first request. If the repairs were not to be carried out by **VAPEC**, the customer, at its own responsibility and costs, calls in another firm to carry out possible warranty services. For the case that the customer entrusts another firm with the execution of the warranty services, **VAPEC** is released from any liability. The obligation of warranty of **VAPEC** is conclusively set forth in ciph. 12.
- 12.3 **VAPEC** freely defines any other liability for direct or indirect damage such as loss of production, lack of use or other lost profits.
- 12.4 The time of warranty of **VAPEC** is restricted to 12 months after delivery.

13. Copyright law/ Law on immaterial goods

- 13.1 All rights to immaterial goods, in particular copyright, patent rights and/or designer rights concerning plans, software inclusive of the respective documentation, technical documents, etc. as well as all know-how in connection with the services of **VAPEC** exclusively belong to **VAPEC**.

- 13.2 The customer is entitled to use possible rights of **VAPEC** in compliance with the respective agreement. The customer is not entitled to make changes and/or adaptations or processing of the services or otherwise to use the rights of **VAPEC**.
- 13.3 The customer is obliged to safeguard that its employees, its counsels and other third parties strictly observe the copyright of **VAPEC**, that they make copies only in connection with the respective services and return these after completion of the services to **VAPEC**. In case the agreement between **VAPEC** and its customer is terminated for some reason, the customer is obliged to return all documents in writing and to delete possible copies on the computer system.
- 13.4 The customer is obliged to observe strict secrecy concerning the rights of Sycraft, to enable no third party to have access to such rights and to include its employees, counsels and other third parties in this obligation of secrecy.
- 14. Notice**
- 14.1 **VAPEC** is entitled to serve notice of the agreement by registered letter if the customer does not carry out activities/services within the provided period of time or does not carry them out within an additionally granted period of 20 days fixed in writing or declares in what period of time the owed activities/services will demonstrably be carried out.
- 14.2 With notice being served all obligations become due. The customer is obliged to settle all outstanding claims of **VAPEC** within 5 days.
- 14.3 After all remainders have been paid, **VAPEC** is obliged to carry out all services with the customer within an adapted time plan.
- 14.4 The customer is entitled to terminate the agreement by sending a registered letter if **VAPEC**, culpably, does not carry out activities/services within the provided period of time or does not carry them out within an additionally granted period of 20 days fixed in writing or declares in what period of time the owed activities/services will demonstrably be carried out.
- 14.5 If **VAPEC** is to be blamed of not fulfilling the agreement, the customer is entitled to claim the consequences of the non-fulfilment according to ciph. 12 and to unwind the agreement. In any case the maximum liability of **VAPEC** is restricted to the value of the ordered services before legal VAT. The customer waives asking higher damages than the maximum liability amount from **VAPEC** or its insurance company.
- 15. Further conditions**
- 15.1 Modifications and/or additions require the written form and must be signed by **VAPEC** and the customer.
- 15.2 All disputes between **VAPEC** and the customer are exclusively governed by Swiss law.
- 15.3 For all disputes relating to the realisation, content and termination of this agreement the Commercial Court of the Canton of Zurich is competent.