

General Terms and Conditions for the Sale of Packaging and Processing Machinery, Accessories, Spare Parts and Packaging Materials (AGB-V)

1. General

1.1 All deliveries and services are subject to these terms and conditions and any separate contractual agreements. Any deviating terms and conditions of purchase on the part of the purchaser shall not form part of the contract, even if the purchaser accepts the quotation. These terms and conditions shall also apply to all future business relationships between MULTIVAC Export AG (hereinafter referred to as 'MULTIVAC') and the purchaser, even if they are not expressly agreed upon again.

Unless otherwise agreed, a contract is concluded upon written confirmation of the order by MULTIVAC.

Verbal agreements made prior to or at the time of conclusion of the contract with MULTIVAC employees, insofar as such employees have not been granted the corresponding legal authority to act on behalf of MULTIVAC, require written confirmation from MULTIVAC to be valid.

The invalidity of individual provisions shall not affect the validity of the remaining provisions of these terms and conditions.

1.2 MULTIVAC reserves its ownership rights and copyright in quotation documents (including order confirmation letters), in particular in the illustrations, samples, cost estimates, drawings, calculations and similar documents and information contained therein or provided – including in electronic form. Tender documents must be treated as confidential by the customer; they constitute trade secrets of MULTIVAC. The customer may therefore only use them within its own organisation and must not disclose their contents to third parties.

Unless expressly agreed otherwise, the purchaser must treat any prototypes, trial and test equipment or tools, and other development items which it may receive from MULTIVAC as confidential and may only use them for the purpose agreed with MULTIVAC. The purchaser is prohibited from observing, examining, dismantling or testing ("reverse engineering") these items beyond the agreed purpose. If, together with the tender documents, MULTIVAC provides the Purchaser with prototypes, pilot and test systems or tools, or other development items containing confidential information, MULTIVAC reserves all rights in the event that a patent is granted for the confidential information provided to the Purchaser.

2. Prices

2.1 All prices are quoted net ex works MULTIVAC. Prices are exclusive of packaging and subject to no deductions. Unless otherwise agreed in writing, all ancillary costs, such as those for freight, insurance, export/transit/import and other permits, as well as certifications, shall therefore be borne by the purchaser.

The purchaser shall also bear all types of taxes, duties, charges, customs duties and similar levies imposed in connection with the contract; should MULTIVAC have become liable for payment of these, the purchaser shall reimburse MULTIVAC upon presentation of appropriate evidence. The agreed prices are based on the statutory charges applicable at the time of order confirmation. Should customs duties, taxes, charges or comparable public-law levies be introduced after this date, or should they become applicable to MULTIVAC or the delivery for the first time, MULTIVAC shall be entitled to adjust the prices accordingly. The buyer undertakes to bear the resulting additional costs.

2.2 MULTIVAC reserves the right to adjust prices should labour rates or material prices change between the time of the quotation and the performance of the contract. A reasonable price adjustment shall also be made if:

- a) the delivery period is subsequently extended for one of the reasons set out in clause 3.2, or
- b) the nature or scope of the agreed deliveries or services has changed; or
- c) the execution is subject to changes because the documentation supplied by the customer does not correspond to the actual circumstances or is incomplete.

2.3 In the absence of any specific agreement, payment shall be made to the supplier's account without any deductions, as follows:

- for goods valued at up to CHF 10,000:	100% within 30 days of delivery
- for goods valued at up to CHF 50,000:	50% immediately upon placing the order
	50% within 30 days of delivery
- for goods valued at over CHF 50,000:	30% within 30 days of placing the order
	30% within 30 days of goods being ready for delivery
	30% immediately upon delivery
	10% payable net within 30 days following the SAT (Site Acceptance Test)

2.4 The customer shall only be entitled to withhold payments or to set them off against counter-claims arising from other legal relationships to the extent that their counter-claims are undisputed, acknowledged or have been established by a final and binding court judgement.

3. Delivery period, delay in delivery

3.1 The delivery period is specified in the order confirmation. The delivery period commences as soon as the contract has been concluded, all necessary official formalities – such as import, export, transit and payment authorisations – have been obtained, the payments due upon placing the order and any security required have

been provided, and all technical issues have been clarified. The delivery period shall be deemed to have been met if the customer has been notified that the goods are ready for dispatch by the expiry of the period.

3.2 The delivery period shall be extended by a reasonable period if

- a. MULTIVAC does not receive the information it requires to fulfil the contract in good time, or if the customer subsequently amends such information, thereby causing a delay in deliveries or services; or
- b. obstacles arise which MULTIVAC cannot avert despite exercising due care, irrespective of whether they arise on its part, on the part of the customer or on the part of a third party; such obstacles constitute force majeure, such as epidemics, mobilisation, war, civil unrest, significant operational disruptions, delayed or faulty supply of the necessary raw materials, semi-finished or finished products, accidents, labour disputes, official measures or omissions, natural disasters and, in general, all circumstances of force majeure, etc.; or
- c. the customer or third parties (e.g. suppliers) are behind schedule with the work they are required to carry out or are in default of their contractual obligations, in particular if the customer fails to comply with the terms of payment.

3.3 If dispatch is delayed or prevented at the purchaser's request or due to events for which MULTIVAC is not responsible, the purchaser shall be invoiced for the costs incurred as a result of storage, commencing one month after notification that the goods are ready for dispatch; in the case of storage at MULTIVAC's warehouse, this shall amount to at least 1 per cent of the invoice amount for each month. Storage shall be at the purchaser's risk. However, MULTIVAC shall be entitled, after setting and allowing a reasonable period to elapse without result, or if the purchaser is not prepared to accept the delivery, to dispose of the goods in question as it sees fit and to supply the purchaser within a reasonable new delivery period.

3.4 The customer may withdraw from the contract without setting a deadline if it becomes definitively impossible for MULTIVAC to fulfil the entire performance before the transfer of risk. Furthermore, the customer may withdraw from the contract if, in the case of an order, the fulfilment of part of the delivery becomes impossible and the customer has a legitimate interest in rejecting the partial delivery. If this is not the case, the purchaser shall pay the contract price attributable to the partial delivery. The same applies in the event of MULTIVAC's inability to perform. In all other respects, Clause 8.3 shall apply. If the impossibility or inability to perform arises during a period of default in acceptance, or if the purchaser is solely or predominantly responsible for these circumstances, the purchaser shall remain obliged to provide consideration.

3.5 If a specific date has been agreed instead of a delivery period, this date shall be deemed to be equivalent to the last day of a delivery period.

3.6 The agreement of a delivery period or a specific date in accordance with clauses 5.1 to 5.6 shall merely have the significance of a due date and shall not constitute an absolute or relative fixed-date transaction within the meaning of Article 108 OR or Article 190 OR.

4. Transfer of Risk

Risk passes to the purchaser when the relevant goods have left MULTIVAC's premises, even if partial deliveries are made or MULTIVAC has assumed other obligations, e.g. shipping costs or delivery and installation.

5. Retention of title

5.1 MULTIVAC retains title to the goods until all outstanding claims that MULTIVAC has against the customer have been paid in full.

5.2 MULTIVAC is entitled to insure the goods against theft, breakage, fire, water damage and other damage at the purchaser's expense, unless the purchaser can provide evidence that they have taken out such insurance themselves.

5.3 The purchaser may neither pledge the goods nor assign them as security until title has passed. In the event of attachment, seizure or other dispositions by third parties, the purchaser must notify MULTIVAC immediately.

5.4 In the event of the purchaser's breach of contract, in particular in the event of default in payment, MULTIVAC shall be entitled to reclaim the goods following a reminder, and the purchaser shall be obliged to surrender them.

5.5 By virtue of the retention of title, MULTIVAC may only demand the return of the goods if it has withdrawn from the contract.

5.6 In the event of attachment, seizure or insolvency on the part of the customer, MULTIVAC shall be entitled to withdraw from the contract and to demand the immediate return of the goods if MULTIVAC has already performed its obligations under the contract.

5.7 The purchaser is entitled to resell the goods in the ordinary course of business. However, the purchaser hereby assigns to MULTIVAC, as security for MULTIVAC's existing claims against the purchaser, all claims arising from the resale against the buyer or against third parties. The purchaser remains authorised to collect these claims even after the assignment, provided that they continue to act in accordance with the contract and are not insolvent. MULTIVAC's right to collect the claims itself remains unaffected by this; however, MULTIVAC undertakes not to collect the claims as long as the purchaser duly meets its payment obligations towards MULTIVAC and is not insolvent. MULTIVAC may otherwise, after setting a reasonable deadline, demand that the customer disclose to it the assigned claims and their debtors, provide all information necessary for collection, hand over the relevant documents and notify the

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debtors of the assignment. If the realisable value of all security existing in favour of MULTIVAC exceeds the total value of the claims to be secured by more than 10 per cent, MULTIVAC shall, at the purchaser's request, be obliged to release security of its choice to that extent.

6. Inspection and acceptance of deliveries and services

- 6.1 Deliveries and services shall be inspected at MULTIVAC or (where the deliveries and services originate from this plant) at the MULTIVAC PLANT prior to dispatch. Should the customer require further inspections, these must be specifically agreed and shall be paid for by the customer.
- 6.2 If the customer wishes to have acceptance tests carried out, these must be agreed in writing. If, for reasons beyond MULTIVAC's control, the acceptance tests cannot be carried out within the agreed timeframe, the characteristics and performance levels to be determined by these tests shall be deemed to have been met.
- 6.3 The customer must inspect the goods and services within a reasonable period and notify MULTIVAC immediately in writing of any defects. If the customer fails to do so, the goods and services shall be deemed to have been approved.

7. Claims for defects

- 7.1 Material defects: Any parts which prove to be defective as a result of circumstances arising prior to the transfer of risk shall, at MULTIVAC's discretion, be repaired free of charge to a defect-free condition or replaced with defect-free parts. MULTIVAC must be notified in writing of the discovery of such defects without delay. Replaced parts shall become the property of MULTIVAC.
- 7.2 Depending on the circumstances, the purchaser's cooperation may be absolutely essential in order to restore the goods to the condition specified in the contract and to carry out remedial measures. This is particularly the case if the goods are located at the purchaser's premises for their intended use and are permanently installed there. In order for MULTIVAC to carry out all remedial measures and replacement deliveries it deems necessary, the customer must, following consultation with MULTIVAC, take all necessary steps, in particular to allow MULTIVAC the necessary time and opportunity. MULTIVAC is entitled to make the performance of its obligations contingent upon the customer paying the contract price due. The purchaser is, however, entitled to withhold a portion of the contract price commensurate with the defect. Only in urgent cases where operational safety is at risk or to prevent disproportionately large damage – in which case MULTIVAC must be notified immediately – does the purchaser have the right to remedy the defect themselves or have it remedied by third parties and to demand reimbursement of the necessary expenses from MULTIVAC.
- 7.3 Of the direct costs arising from the rectification of the defect or the replacement delivery, MULTIVAC shall bear – provided the complaint proves to be justified – the costs of the replacement part, including postage. It shall also bear the costs of removal and installation, as well as the costs of providing the necessary fitters and assistants, including travel expenses, provided that this does not place a disproportionate burden on MULTIVAC.
- 7.4 The customer shall have the right to withdraw from the contract in accordance with statutory provisions if MULTIVAC – subject to the statutory exceptions – allows a reasonable period set for it to rectify the defect or provide a replacement due to a material defect to elapse without result. If the defect is only minor, the customer shall only be entitled to a reduction in the contract price. The right to a reduction in the contract price is otherwise excluded. Further claims are governed by Clause 7.2 of these Terms and Conditions.
- MULTIVAC undertakes, upon written request by the purchaser, to repair or replace (rectification) as soon as possible, at MULTIVAC's discretion, any parts of MULTIVAC's deliveries which demonstrably become defective or unusable by the expiry of the warranty period as a result of poor materials, faulty design or defective workmanship. The customer is not entitled to rescind the contract (rescission) or to claim a reduction in the purchase price. Rectification does not give rise to a new warranty period.
- 7.5 The warranty is governed by the criteria set out in this section, but does not cover cases where the defect is attributable to any of the following causes:
Unsuitable or improper use, faulty assembly or commissioning by the purchaser or third parties, natural wear and tear, faulty or negligent handling, improper maintenance, unsuitable operating materials, defective construction work, unsuitable building ground, chemical, electrochemical or electrical influences, provided that MULTIVAC is not responsible for them.
- 7.6 If the customer or a third party rectifies the defect improperly, MULTIVAC shall not be liable for any resulting consequences. The same applies to any modifications made to the delivered goods without MULTIVAC's prior consent.
- 7.7 However, if a request by the customer to remedy a defect proves to be unjustified, MULTIVAC may demand reimbursement from the customer for the costs incurred as a result.
- 7.8 Infringement of intellectual property rights: If the goods infringe any intellectual property rights, MULTIVAC shall, at its own expense, in principle either secure the right for the customer to continue using the goods or modify the goods in a manner reasonable for the customer such that the infringement no longer exists.
If this is not possible on economically reasonable terms or within a reasonable period, the customer shall be entitled to withdraw from the contract. Under the aforementioned conditions, MULTIVAC shall also be entitled to withdraw from the contract.

7.9

Furthermore, MULTIVAC shall indemnify the purchaser against any undisputed or legally established claims by the relevant intellectual property rights holders. Subject to clause 8.3, MULTIVAC's obligations set out in clause 7.8 are exhaustive in the event of an infringement of industrial property rights or copyright.

They shall only apply if

- d. the purchaser notifies MULTIVAC without delay of any alleged infringements of industrial property rights or copyright,
- e. the purchaser provides MULTIVAC with reasonable assistance in defending against the asserted claims or enables MULTIVAC to implement the modification measures in accordance with clause 7.7,
- f. MULTIVAC reserves the right to take all necessary defensive measures, including out-of-court settlements,
- g. the legal defect is not attributable to an instruction from the purchaser; and
- h. the infringement was not caused by the purchaser having altered the goods supplied without authorisation or having used them in a manner not in accordance with the contract.

8. Liability

8.1

If the goods cannot be used by the customer in accordance with the contract due to MULTIVAC's fault arising from the failure to implement or the incorrect implementation of suggestions and advice provided before or after the conclusion of the contract, or due to a breach of other ancillary contractual obligations – in particular instructions for the operation and maintenance of the goods – the provisions of , clauses 7 and 8.2, shall apply accordingly, to the exclusion of any further claims by the Purchaser.

8.2

MULTIVAC shall be liable for damage not caused to the goods themselves only

- a. in cases of wilful misconduct,
- b. in the event of gross negligence on the part of its officers or senior executives,
- c. in the event of culpable injury to life, limb or health,
- d. in the event of defects which it has fraudulently concealed or the absence of which it has guaranteed,
- e. in the event of defects in the goods supplied, insofar as liability arises under the Product Liability Act for personal injury or damage to property used for private purposes.

8.3

In the event of a culpable breach of essential contractual obligations, MULTIVAC shall be liable even in cases of gross negligence on the part of non-managerial employees and in cases of slight negligence; in the latter case, liability shall be limited to damage that is typical for the contract and reasonably foreseeable. Essential contractual obligations are those obligations the fulfilment of which is essential for the proper performance of the contract and on the observance of which the contracting party regularly relies and is entitled to rely.

Any further claims for liability, in particular claims for damages arising from fault at the time of conclusion of the contract, due to other breaches of duty or due to tortious claims for compensation for property damage, are excluded. The above exclusions and limitations of liability also apply in favour of MULTIVAC's employees, agents and other vicarious agents.

9. Force majeure

In the event of force majeure, the affected contracting party shall not be held responsible for any resulting delay or impossibility of performance. In such a case, the delivery period shall be extended accordingly. Force majeure shall include, amongst other things: (i) war (whether declared or undeclared), hostilities, attack, acts of foreign enemies, large-scale military mobilisation, riots; (ii) civil war, insurrection, rebellion and revolution, military or other seizure of power, coup d'état, uprising, acts of terrorism, sabotage or piracy; (iii) currency and trade restrictions, embargoes, sanctions; (iv) lawful or unlawful official acts, compliance with laws or government orders, expropriation, seizure of works, requisition, nationalisation; (v) plague, epidemic, pandemic, natural disaster or extreme natural event; (vi) explosion, fire, severe weather, destruction of equipment, prolonged disruption to transport, telecommunications, information systems or energy supplies; (vii) general industrial unrest such as boycotts, strikes and lockouts, work-to-rule, and the occupation of factories and buildings; (viii) shortages of labour and raw materials, insufficient port and unloading capacity, serious transport accidents and other reasons beyond the control of a contracting party.

10. Use of Software

Where software is included in the scope of delivery, the Purchaser is granted a non-exclusive and non-transferable right to use the software supplied, including its documentation. It is provided for use on the specific item of delivery for which it is intended. Use of the software on more than one system is prohibited, unless this is expressly authorised by MULTIVAC.

The purchaser is not permitted to make copies of the software, except for archiving purposes, nor to modify, decompile or carry out any form of 'reverse engineering' on the software. MULTIVAC shall provide the information required for interoperability upon request. The customer undertakes not to remove the manufacturer's details – in particular copyright notices – or to alter them without MULTIVAC's prior express consent.

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All other rights to the software and the documentation, including copies, remain with MULTIVAC or the software supplier.

11. Open-source software

The software supplied may contain open-source components, either in whole or in part. These are subject to the relevant licence terms of the open-source components used. The purchaser may request the relevant licence terms from MULTIVAC. The purchaser undertakes to comply with these terms of use when utilising the open-source components.

12. Machine data

All data relating to the goods supplied (machine data) belong exclusively to MULTIVAC as the manufacturer and are its property. MULTIVAC is therefore entitled to use, disclose, process or modify the machine data without restriction. Machine data consists of raw data that cannot be traced back to any natural person. It is therefore neither MULTIVAC's intention nor its aim to collect personal data relating to the customer or to staff working on the goods supplied.

13. Confidentiality

13.1 Without prejudice to any overriding provisions of a confidentiality agreement that may have been concluded separately, the following shall apply: The customer is obliged to treat as confidential any trade secrets of MULTIVAC of which it becomes aware in the course of the negotiation, conclusion or performance of the contract, and not to disclose them to third parties. MULTIVAC identifies trade secrets by labelling the information as 'Confidential' (or similar designations). Even in the absence of such labelling, the customer must maintain confidentiality if the circumstances indicate that the information in question constitutes a trade secret of MULTIVAC. Trade secrets of MULTIVAC include, in particular, quotation documents and prototypes (and the like; see Clause 1.2); plant or machinery covered by the contract for series production at the Purchaser's premises, together with the associated documentation, shall remain trade secrets of MULTIVAC until they are delivered to the Purchaser. Notwithstanding this, the provision in Clause 10 shall apply to any software supplied (in conjunction with the goods) together with its documentation.

13.2 This obligation of confidentiality does not extend to facts and information if it can be proven that

- a. are or become generally known through no fault of the customer;
- b. were already known to the customer before they were made available to them by MULTIVAC, or the customer subsequently obtained the information independently and without breaching the duty of confidentiality;

c. has come to the attention of the customer through a third party, without any breach of the duty of confidentiality to which that third party is bound towards MULTIVAC.

13.3 The purchaser shall not be in breach of the confidentiality obligations if it discloses a trade secret of MULTIVAC to the extent that this is bindingly required by an order of a court or a public authority or by a statutory provision, provided that the purchaser must take all reasonable and practicable steps to prevent or limit such disclosure as far as possible. To the extent permitted by law, the Purchaser is obliged to notify MULTIVAC immediately of the impending disclosure.

13.4 If the Purchaser breaches its obligation of confidentiality, it shall be liable to pay a contractual penalty to be determined at MULTIVAC's reasonable discretion, the appropriateness of which shall be reviewed by the competent court in the event of a dispute, unless the Purchaser is not at fault for the breach of duty.

14. Governing Law, Place of Jurisdiction

14.1 Swiss law shall apply, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980.

14.2 The place of jurisdiction shall be the court having jurisdiction over MULTIVAC's registered office if the purchaser is a legal person or a body governed by public law. MULTIVAC shall, however, be entitled to bring proceedings at the purchaser's registered office.

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Authoritative language version

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