

## GENERAL CONDITIONS OF SALE

### 1. APPLICABILITY

- 1.1. These General Conditions of Sale (“**GCS**”) apply to any and all deliveries, services and offers by Vascotube GmbH, Goethestr. 38, 75217 Birkenfeld, Germany (“**Vascotube**”) and to any and all current and future business transaction and/or relationship with a Vascotube customer (“**Buyer**”). Vascotube’s GCS are applicable in the respective version effective at the time of a transaction.
- 1.2. Vascotube’s business and service scope is confined to individual requests and specifications by the Buyer, i.e. the ordered goods and products are strictly based and manufactured on the specifications provided by the Buyer (“**Products**”).
- 1.3. These GCS apply exclusively. Conflicting, deviating or supplementary general terms and/or conditions of Buyer shall not be applicable to any business with Vascotube unless Vascotube expressly agrees to in writing. The exclusive applicability of these GCS shall stay effective even if Vascotube performs its obligations to the Buyer without any reservations and knowing of Buyer’s general terms and conditions.
- 1.4. Any amendment, alteration or modification to the GCS, including this clause, must be agreed in writing between Vascotube and the Buyer. Any declarations and notifications with regards to these GCS must also be made in written form.

### 2. ORDERS AND CONFIRMATION

- 2.1. Vascotube’s offers and cost estimations are subject to change at any time.
- 2.2. Orders by Buyer for the delivery of any Vascotube Products will only become valid when Vascotube issues a respective confirmation of the order (“**Order Confirmation**”). Obligations of Vascotube pursuant to and arising out of Buyer’s order are subject and limited to the form and specification as stated in the Order Confirmation only. Quantities, lead times and other conditions of the Order Confirmation are only to be changed with Vascotube’s written consent.
- 2.3. Shipping or delivery dates are estimations only and are not guaranteed unless agreed upon explicitly in writing. Vascotube will however undertake reasonable efforts to initiate shipments as scheduled.
- 2.4. Due to the specific production process of the Products, Vascotube reserves the right to deviate up to plus or minus ten per cent (+/- 10%) in quantity in relation to the quantity as

set out in the Order Confirmation. Vascotube is also entitled to make part deliveries if to be considered reasonable for the customer.

- 2.5. With the order confirmation the contract becomes valid. All orders are fixed orders, as our tubing is custom made on order. All changes and cancellations need the approval of Vascotube and are in the sole authority of Vascotube. Depending on the production process, the costs of the cancelation have to be calculated, but are minimum: 15% of the order amount will be invoiced, 16 weeks before shipment date, 25% of the order amount will be invoiced, 12 weeks 50%, 6 weeks 80%, 4 weeks before shipping date 100%.

### **3. TERMS OF DELIVERY**

- 3.1. The Products are delivered Ex Works (**EXW**) ramp on Vascotube's premises at Goethestr. 38, D-75217 Birkenfeld, Germany (Incoterms®2010 apply). In terms of clarification, Buyer in particular is obliged to loading at and freight from the defined EXW place at Buyer's expense and risk (*Holschuld*) as well as to bear all customs, tax and other costs and duties with respect to transport and ex-/importation. In case Vascotube files declarations or registrations for the Products with the carrier or customs, Vascotube and its employees solely act on behalf and in the name of the Buyer as his vicarious agent (*Erfüllungshilfe*).
- 3.2. Any expenses sustained by Vascotube in course of loading and/or transport of the Products shall be invoiced by Vascotube to Buyer separately.
- 3.3. The Products shall be insured against transport and any other risks only upon Buyer's request who shall be obliged to bear the related expenses and costs. Any and all claims for loss or damage during transport must solely be filed by the Buyer with the carrier. Vascotube is not responsible for the contractual rights and obligations between Buyer and carrier.

### **4. TRANSFER OF RISK AND OWNERSHIP**

- 4.1. Upon loading of the Products at the defined EXW place pursuant to No 3.1 above, any risk and liability of accidental destruction or loss or deterioration of the Products is automatically transferred to Buyer.
- 4.2. The ownership in the Products shall pass to Buyer at the time of loading at the defined EXW place.

### **5. CONDITIONS OF PAYMENT**

- 5.1. Unless otherwise agreed upon in the Order Confirmation, Vascotube's prices are quoted **EXW** (Incoterms®2010 apply) and are exclusive of any shipping or handling charges,

customs, packaging or insurance. Statutory VAT is to be charged to Buyer in accordance with German tax regulations (*UmsatzsteuerG*).

- 5.2. Payment shall be due subject to the credit terms as set out in the Order Confirmation, e.g. payment in advance, cash upon delivery (C.O.D.) or thirty (30) days from the date of invoice.
- 5.3. In case of Buyer's late payment, Vascotube shall have the right to stop delivering or refrain from further deliveries to Buyer, unless Buyer grants a suitable guarantee, approved by Vascotube, or provides total payment of any outstanding accounts before loading of the Products. The same applies if, after conclusion of a contract, it becomes apparent that Vascotube's entitlement to payment is jeopardized by Buyer's inability to perform his obligations.
- 5.4. Buyer may offset claims only if explicitly undisputed, acknowledged or legally binding vis-a-vis Vascotube.
- 5.5. Any late payments are subject to a finance charge pursuant to the statutory default interest rate. Any other rights of Vascotube are reserved.

## **6. CONFORMITY OF THE PRODUCTS; WARRANTY**

- 6.1. The Products shall only comply with and be subject to the description and specification as defined in the Order Confirmation. The Products will only comply with the description and specification as stated in the Order Confirmation and no further or other warranty is given by Vascotube. The Products are manufactured by Vascotube strictly based on the Order Confirmation's specifications.
- 6.2. Upon receipt of the Products, the Buyer has to perform immediately an inspection of the Products ("**Incoming Inspection**") with regards to the Order Confirmation description and specification (sec. 377 of the German Commercial Code (*HBG*)). Any detectible discrepancy between the warranty and the Products must be notified to Vascotube in writing or text form (e-mail) no later than twenty (20) days from the receipt of the Products. If Vascotube has not received from Buyer a respective written notification within this period, the Products shall be deemed conforming with the warranty as set out in the Order Confirmation. Complaints to carriers or any other third party are not considered as due notification.
- 6.3. Any claim from any Product's defect that was not detectable at the Incoming Inspection shall be deemed to be waived by the Buyer unless notification was made in writing or text format (e-mail) within twenty (20) days of Buyer's discovery of the defect. If no such notification was made within one (1) year from Buyer's receipt of the Products to which such claim relates, the Products are finally deemed free of defects or faults.

- 6.4. All other conditions, warranties and representations with regards to the Products, either expressed or implied, are excluded, including, but not limited to, warranties of merchantability or fitness for a particular purpose of the Products sold hereunder.
- 6.5. Buyer acknowledges that it is his sole responsibility to determine that the Products purchased from Vascotube will suitably meet the requirements of the intended use. The same applies to the compliance of the goods produced by the Buyer with any medical requirements, GMP guidelines and applicable laws, orders and other provisions. Vascotube explicitly grants no warranty and is not liable for the above referred obligations of the Buyer.
- 6.6. Any conformity or warranty granted by Vascotube under this No. 6 shall not apply to any defects resulting from
- (i) loss or damage in transit;
  - (ii) unreasonable or inadequate storage, installation or maintenance;
  - (iii) accident; Vascotube General Conditions of Sale 1/2015 4/6
  - (iv) Buyer's attempt to make or cause to be made any repairs or alterations on the Products without the prior written consent of Vascotube;
  - (v) Buyer's acts or omissions which exposes the Products to any environment not suitable with the respective specifications, including without limitation Buyer's use of toxic, corrosive or caustic liquids and/or gases with the Products;
  - (vi) Buyer's negligence, mishandling or misuse.
- Vascotube reserves the right to examine the Products in order to determine if a case of warranty is considered.
- 6.7. It is expressly understood that any technical advice furnished by Vascotube with respect to the use of Products is given without charge and Vascotube assumes no obligation or liability for such advice given. Any advice is being given and accepted at Buyer's risk only.

## **7. LIABILITY**

- 7.1. In case of non-conformity of the Products with the warranty pursuant to No. 6 above, Vascotube shall be entitled to rectification or replacement of the Products at Vascotube's discretion. If rectification or replacement is impossible or unreasonable, Vascotube shall be entitled to refuse such correction. Vascotube may also refuse the remedy as long as Buyer fails to fulfill his payment obligations for the non-defective part of the Products.

Only in case Vascotube is unable or fails to remedy, or if remedy is delayed and either Buyer cannot reasonably be expected to accept this or the delay is caused by Vascotube's fault or if Vascotube finally and genuinely refuses the remedy of Products or if Buyer cannot reasonably be expected to accept Vascotube's remedy, Buyer shall have the option to either reduce the purchase price (*Minderung*) or to withdraw from the contract (*Rücktritt*).

- 7.2. Vascotube may, instead of remedy pursuant to No. 7.1 above, choose to refund the payment to Buyer to the extent equating to the relevant non-conforming part of the Products.

- 7.3. In case of non-conformity of the Products with the warranty pursuant to No. 6 above or impossibility of the production of the Products due to Buyer's false or insufficient descriptions or specifications provided, Vascotube may refuse Buyer's rights in No 7.1 and 7.2 according to statutory law.
- 7.4. Buyer acknowledges that, in case of replacement of the Products, the replaced Products ("**Replacement Products**") shall only meet the Order Confirmations' description and specification, if not agreed to the different between the parties in writing and explicitly referring to the initial order. Replacement Products shall be subject to the limited warranties set forth in No. 6 above.
- 7.5. The liability of Vascotube is – notwithstanding the rights and obligations as set out in the GSC – limited as follows:

Vascotube shall be fully liable for damages only in case of intent, any culpable infringement of life, body or health and Products' non-conformities which have been fraudulently concealed. For any other damages, Vascotube's liability is limited to the foreseeable and typically arising damages in case of gross negligence (*grobe Fahrlaessigkeit*) by Vascotube; in case of ordinary negligence (*einfache Fahrlaessigkeit*), Vascotube's liability is limited to the purchase price. Any further claims are excluded, notwithstanding statutory liability according to the German Products Liability Act (*Produkthaftungsgesetz*).

- 7.6. No legal proceeding shall be brought for any breach of this contract later than 12 months after the accrual of the cause of action therefor.

## 8. KNOW HOW & IP RIGHTS

Vascotube reserves any and all rights and title to any business information or knowledge that Vascotube is in possession of or gains during the performance of any business services or contracts (*know how*), as well as to any and all inventions and intellectual or industrial property rights (including, but not limited to, patents, copyrights, trademarks, designs, etc.) that may be held by Vascotube or exist insofar, unless otherwise agreed and always subject to the use of the Products to which Buyer is only entitled according to the specific purpose of the respective contract. Also any production related process or procedure is deemed proprietary know how of Vascotube.

## 9. FORCE MAJEURE

Vascotube shall not be considered as being in default of any of its obligation provided for in these GSC if said default is due to *force majeure*. Force majeure is deemed to be any event beyond the control of Vascotube such as, by way of example but not limited to, natural disasters, fires, floods, government acts, laws or regulations, national or corporate strikes, or any other reasons beyond Vascotube's control such as accidents to machinery, acts of sabotage, riots, delays in transportation or lack of transportation facilities, fuel or energy, manpower, spare parts or materials or non-performance or delay of suppliers.

**10. PLACE OF PERFORMANCE, APPLICABLE LAW & DISPUTES**

- 10.1. Unless otherwise agreed upon, the place of performance (*Erfüllungsort*) shall exclusively be Vascotube's place of business on the premises at Goethestr. 38, D-75217 Birkenfeld, Germany.
- 10.2. To any and all rights and obligations arising out of or in connection with these GSC and any other contractual relationship between Vascotube and the Buyer, German law shall apply, excluding the UN Sales Convention (*CISG*). Vascotube General Conditions of Sale 1/2015 6/6
- 10.3. For any and all disputes resulting from these GSC or any other contractual relationship between Vascotube and the Buyer, the jurisdiction shall exclusively have the courts competent for Vascotube's place of business (*Gerichtsstand*).

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January 8, 2018