

# STANDARD TERMS AND CONDITIONS OF CONTRACT

Vomax Instrumentation Pty. Ltd (ABN 30 123 874 831)

V1.17

## 1. INTERPRETATION

- 1.1 "Articles" means all instruments, articles, materials or services supplied, or quoted to be supplied, by Vomax to a Customer.
- 1.2 "Contract" means any contract entered into between Vomax and a Customer for the supply of Articles.
- 1.3 "Customer" means the person, firm, company, authority or entity to whom Vomax provides a quotation or from whom Vomax accepts an order.
- 1.4 "Vomax" means Vomax Instrumentation Pty. Ltd.

## 2. TERMS

- 2.1 Unless varied in writing, these terms apply to every contract for the supply of Articles and prevail over any other terms proposed by the Customer at any time.
- 2.2 No agent or contractor of Vomax may vary or add to these terms other than with the written consent and acknowledgement of Vomax or make any representation about the performance, specifications or fitness for purpose of any Article other than as specified in authorised Vomax manuals for the relevant Article.

## 3. PRICES AND VALIDITY

- 3.1 Prices quoted are valid for sixty (60) days from date of quotation but, prior to acceptance, are subject to change or withdrawal at any time by written notice.
- 3.2 All prices are firm and in Australian Dollars (AUD) unless stated otherwise.
- 3.3 In the event that commissioning and calibration of Articles does not commence within six (6) months of delivery, price escalation may apply for engineering services required for those purposes.
- 3.4 If GST is payable on any supply made by Vomax to the Customer then to the extent not otherwise specifically provided for in any quoted or agreed price the amount otherwise payable by the Customer will be increased by the amount of the GST.

## 4. TERMS OF PAYMENT

- 4.1 Terms of payment if not specified are fourteen (14) calendar days from date of invoice for Articles.
- 4.2 If payment is not made in full by the due date Vomax will be entitled to charge interest on any amount outstanding at a rate 3% higher than the maximum rate charged by Vomax's bank in respect of an unsecured overdraft of such amount.
- 4.3 The Customer will not be entitled to deduct from any amount due any set off, counterclaim or other sum unless agreed in writing by Vomax.
- 4.4 In the case of a Letter of Credit, operation of the Letter of Credit for Articles shall be the date of despatch ex Vomax works, Adelaide, Australia in accordance with INCOTERMS 2000.

## 5. DELIVERY

- 5.1 Delivery is "Ex Works" as defined by INCOTERMS 2000. Vomax will arrange for loading of articles onto the Purchaser's nominated carrier at Vomax's works Adelaide, South Australia.

## 6. RISK

- 6.1 All risks transfer to the Customer at the time of delivery.

## 7. TITLE

- 7.1 Transfer of title occurs once the Articles have been paid for in full.
- 7.2 Until payment in full:
  - (a) the Customer shall hold the Articles as fiduciary bailee and agent for Vomax;
  - (b) unless otherwise notified in writing, the Customer is authorised to sell the Articles in the ordinary course of business;
  - (c) after giving 48 hours notice to the Customer, Vomax shall be entitled to enter the premises of the Customer between 9am and 5pm to inspect the Articles;
  - (d) the Articles shall be stored separately and in a manner to enable them to be identified and cross-referenced to particular invoices; and
  - (e) the proceeds of any Articles sold will held by the Customer on trust for Vomax, and must be in a separate account and must not be mixed with any other moneys.

7.3 If payment for the Articles is not made by the due date Vomax shall be entitled to enter the Customer's premises at any time to do all things necessary in order to take possession of the Articles, without being liable for trespass, conversion or any resulting damage. The Customer shall be liable for all costs of whatsoever nature of and associated with the exercise of rights by Vomax under this clause, which shall be payable on demand.

7.4 The Customer acknowledges that if the Articles are mixed with or incorporated into, other products or items such that the Articles are no longer separately identifiable, then Vomax will be owner in common of the new product with the Customer.

## 8. DELIVERY DATE

8.1 The delivery date defined in a quotation or order acceptance from Vomax is based on Vomax factory demands at the time of the quotation or order acceptance.

8.2 The delivery date may be varied at the time of order based on Vomax factory demands at time of order.

## 9. EXCUSABLE DELAY

9.1 In the event of any stoppage, delay or interruption of work or business related to the manufacture of Articles as a result of strikes, lockouts, trade disputes, breakdown, accident or delay in obtaining material inputs for equipment manufacture or any other cause beyond the control of Vomax, the delivery date shall be extended (without claim by the Customer) by the duration of the delay.

9.2 The Customer is allowed a reasonable time to provide Customer supplied information. Excessive delays in providing information will result in the delivery date being extended by the duration of the delay and may result in re-negotiation of the delivery date in accordance with prevailing factory demands at that time.

9.3 Any delays beyond the control of Vomax which impede the provision of engineering services during commissioning and calibration of Articles shall entitle Vomax to extend the delivery date and all costs incurred by Vomax as a result of such delays will be the responsibility of the Customer.

## 10. CONFIDENTIALITY

10.1 Any drawings, software or other information supplied by Vomax is not to be passed to, or made accessible by third parties without prior written consent of Vomax, and then only to use such information for the specific purpose for which consent is granted .

10.2 Copyright in all documentation in relation to Articles will remain vested in Vomax and may not be used without the express written consent of Vomax for any purpose other than by the Customer for the purposes for which it is furnished.

10.3 Unless specifically witten otherwise in the Customer's purchase order, Vomax reserves the right to use images and data from the installation and use of the Articles for promotional purposes.

## 11. CERTIFICATION AND PERFORMANCE

11.1 Unless specifically notified by Vomax in writing, the Customer acknowledges that:

- (a) no Article is certified for assessment of commodities in relation to transfer of ownership or otherwise for measurement in the context of commercial transactions; and
- (b) Instruments supplied by Vomax are an extra tool to be used in assessing plant performance trends and general operational status, and not for definitive or contractual determination of performance; and
- (c) all performance indicators are at one standard deviation and exclude sampling and laboratory errors as generally determined by the use of the 'Grubbs Estimator" technique (see ASTM 6543).

## 12. WARRANTY

12.1 Vomax warrants the Articles will be free from encumbrance at the time of transfer to the Customer.

12.2 Vomax warrants the Articles will be of the kind and quality described in the quotation under which they are sold and in any supplied operating manuals and that they will be of merchantable quality, free of defects in workmanship and material and be fit for purpose as described in the operating manuals. Except as provided in these terms or as required by mandatory operation of law, all conditions or warranties express or implied in respect of Articles are excluded.

12.3 Unless otherwise mutually agreed for special projects, the warranty period for equipment supplied shall be thirteen (13) months from date of delivery or twelve (12) months from date of commissioning whichever period expires first. Notification of faults believed by the Customer to be covered by warranty must be made in writing to Vomax within thirty (30) days of discovery of the defective occurrence.

12.4 Vomax does not accept responsibility for on site damage, misuse of the Articles or use not in accordance with Vomax operating manuals, guidelines or written instructions.

12.5 Warranties provided under these terms exclude deficiencies caused by compliance with Customer's instructions, damage caused by misuse, neglect or any other operation or activity contrary to instructions for use.

12.6 Warranty does not apply until the Articles are paid for in full and warranty is limited to the replacement of parts (or whole Articles) and does not include freight or labour costs.

### **13. LIABILITY**

13.1 Notwithstanding any other term or condition contained in any Contract, Vomax will not be liable for or any losses, loss of income, loss of opportunity to earn profits, damages, compensation, costs and expenses, or for any indirect, incidental or consequential loss or damage resulting from or in any way related to a Contract (including delivery of Articles provided under a Contract) irrespective of the nature or cause of action, except where the liability of Vomax cannot by law be excluded .

13.2 The liability of Vomax to a Customer in respect of all other claims whatsoever is limited in aggregate to the payment by way of damages of a sum or sums not exceeding the total amount of price payable under the relevant Contract.

13.3 The provisions of this Clause 13 continue to apply notwithstanding fundamental breach, breach of fundamental term, revision, repudiation or termination for any reason or frustration, whether deliberate, unintentional or by operation of law.

### **14. ACCEPTANCE OF ORDER**

14.1 All orders received by Vomax are subject to acceptance by Vomax.

### **15. TERMINATION**

15.1 Following written notification of acceptance of an order by Vomax the Customer may not suspend or terminate the order.

### **16. WAIVER OF REMEDIES**

16.1 No forbearance, delay or indulgence by either party in enforcing the provisions of any Contract will prejudice or restrict the rights of that party nor will any waiver or its rights operate as a waiver of any subsequent breach and no right, power or remedy by the Contract conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and each such right, power or remedy will be cumulative.

### **17. CONSEQUENTIAL DAMAGE**

17.1 Vomax shall not be held responsible for any consequential damage that may result from the use of Articles.

### **18. APPLICABLE LAW**

18.1 These terms and any Contract between Vomax and the Customer are governed by and will be construed in accordance with the laws of South Australia.

### **19. DISPUTES**

19.1 Vomax and the Customer must negotiate in good faith for a period of 21 days following receipt of a written notice of dispute (issued by either Vomax or the Customer) to resolve the dispute detailed in such notice.

19.2 If the dispute is not resolved within that time, then at any time thereafter either Vomax or the Customer may require the dispute to be referred for arbitration. If agreement cannot be reached on an arbitrator the arbitrator will be appointed by the President for the time being of the Institute of Arbitrators (South Australia Division). The arbitrator will act as an expert and will determine the procedures for the arbitration.

19.3 The decision of the arbitrator will be final and binding.

19.4 The costs of the arbitrator will be borne equally unless otherwise directed by the arbitrator.

### **20. REMEDIES**

20.1 If the Customer breaches a Contract, or if an individual commits an act of bankruptcy under the Bankruptcy Act, or if a company becomes an externally administered body corporate under the Corporations Act, Vomax may (in addition to any other rights to which it may be entitled) suspend or terminate any Contract by giving written notice to the Customer, provided that the Customer will remain obliged to pay for Articles already delivered under the Contract.