



## General Terms and Conditions

of

**va-Q-tec SG Pte Ltd.**

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These General Terms and Conditions are binding upon you (the “Customer”) and **va-Q-tec SG Pte Ltd.** (the “Supplier”).

The Supplier has agreed to supply Goods to the Customer on the terms set out in these General Terms and Conditions.

Each time the Customer issues a Purchase Order to the Supplier in accordance with Clause 5 of these terms and conditions and an Order Confirmation is issued by the Supplier, an Agreement incorporating these General Terms and Conditions is formed between the Customer and the Supplier for the supply of the Goods specified in that Purchase Order.

The date of the Agreement between the Supplier and the Customer shall be the date when the Supplier issues an Order Confirmation for a valid Purchase Order issued by the Customer.

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## General Terms and Conditions

### 1. DEFINITION

- 1.1. In this Agreement, the following words and expressions shall have the following meanings, except where the context otherwise requires:

**'Acceptance'** means the Goods and/or Services have been accepted by the Customer pursuant to the formal acceptance procedures.

**'Agreement'** has the meaning as set out in clause 3.2.

**"Business Day"** means a day that is not a Saturday, a Sunday or a public holiday in Singapore.

**'Confidential Information'** includes, but is not limited to, all information of a confidential or proprietary nature relating to the Agreement or the Disclosing Party and/or its Related Corporations which would be apparent to a reasonable person, familiar with the Disclosing Party's business and the industry in which it operates, that such information is or should be of a confidential or proprietary nature, including but not limited to trade secrets, know-how, show-how, patents research, development or technical information, confidential and proprietary product or information, Intellectual Property Rights, business plans, operations or systems, financial and trading positions, details of or relating to customers, suppliers, debtors or creditors, information relating to the officers, directors or employees of Disclosing Party and/or its Related Corporations, marketing information, brochures, printed matter, rates and rate tables, contracts regardless of form, format or media including, without limitation, written, verbal, or obtained through meetings, documents, correspondence or inspection of tangible items.

**'Customer'** means the customer that issues a Purchase Order, thereby forming an Agreement with the Supplier.

**'Damages'** means all direct and indirect liabilities, losses, damages, costs and expenses, fines and penalties including loss of profits, business or anticipated savings, or any other consequential loss, fees on a full indemnity basis and disbursements and costs of investigation, litigation, settlement, judgment and interest regardless of whether they arise in contract, tort (including negligence) or under any statute or otherwise.

**'Delivery'** means delivery of Goods that meet the Customer's specifications or requirements, to or at a site, warehouse or any other designated by the Customer.

**'Due Date'** means each date stated on the Purchase Order, or otherwise agreed in writing between parties, as being the date on which the Supplier shall be obliged to deliver the Goods.

**'Force Majeure Event'** means any event beyond the reasonable control of a Party or subsuppliers or subcontractors of the Party, including but not limited to terrorists, strikes by employees, fire, flood, earthquake, windstorm, or other natural disaster, act of any government including but not limited to war, invasion, government sanctions (e.g. embargo), labour dispute (e.g. strike, lockout or boycott).

**'Goods'** means all goods as specified under the Purchase Order.

**'GST'** means the tax chargeable under the GST Act on the supply of goods and services in Singapore and the importation of goods into Singapore.

**'GST Act'** means the Goods and Services Tax Act (Cap 117A) of Singapore.

**'Insolvency Event'** means in relation to any party:

- (a) The party ceases to carry on business;

- (b) The party is or becomes unable to pay its debts when they are due;
- (c) Any step is taken by the party to enter into any scheme of arrangement between the party and its creditors;
- (d) Any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of the party's assets or business; or
- (e) Any step is taken to appoint a receiver, a receiver and manager, a judicial manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person to a party or to the whole or any part of the party's assets or business.

**'Invoice'** means the invoice issued by the Supplier for the price of the Goods ordered pursuant to a Purchase Order.

**"Offer"** means the offer issued by Supplier in relation to Goods, content of the offer shall be at least price for the Goods, kind of Goods, delivery date, delivery address.

**"Order Confirmation"** means the confirmation of acceptance of the Purchase Order based on the terms of the Offer.

**'Price'** for Goods means the prices specified in the Invoice exclusive of any GST imposed in Singapore by reference to the supply but shall be inclusive of Incidental Costs (if applicable).

**'Purchase Order'** means the order for Goods and/or Services validly issued by the Customer to the Supplier in accordance with Clause 5.

**'Receiving Party'** means the party that receives the Confidential Information of the other.

**'Warranty'** in relation to any Goods provided by the Supplier to the Customer shall mean the warranty set out in this General Terms and Conditions if any.

## **2. INTERPRETATION**

2.1. Headings in this Agreement are for convenience only and do not affect interpretation.

2.2. The following rules of interpretation apply unless the contract requires otherwise:

- (a) A reference to a person includes a body corporate and unincorporated body or other entity and conversely;
- (b) A reference to a clause, is to a clause, to this Agreement;
- (c) A reference to a right or obligation of any two or more persons confers that right or imposes that obligation as the case may be jointly and severally;
- (d) A reference to a statute, ordinance or by-law includes regulations and other instructions under it and consolidations, amendments, re-enactments or replacements of any of them;
- (e) Different grammatical forms of the same word defined herein shall have the corresponding meaning;
- (f) Words importing the singular only shall also include the plural and vice versa;
- (g) Examples or words of inclusion, are illustrative only and do not limit the generality of the relevant subject; and
- (h) A reference to '\$', '\$\$' or 'dollar' is a reference to the Singapore dollar.

## **3. STRUCTURE**

3.1. A binding Agreement is formed when the Customer issues a Purchase Order based on these General Terms and Conditions and the Supplier accepts such Purchase Order by issuing an Order Confirmation.

3.2. For the avoidance of doubt, the following documents shall constitute an Agreement between the parties:

3.2.1. These General Terms and Conditions; and

3.2.2. The Order Confirmation.

3.3. In the event of any inconsistency or conflict amongst the documents listed in Clause 3.2 above, the order of precedence of the documents shall, be in the same order as set out in Clause 3.2 above, i.e. these General Terms and Conditions shall take precedence over the Order Confirmation. Provided always that in the event that the parties agree to vary these General Terms and Conditions such variations shall be contained in a separate annexure to these General Terms and Conditions and the variations contained in such separate annexure shall take precedence over Clause 3.2.1 above.

3.4. This Agreement sets forth the entire agreement and understanding between the parties and supersedes all prior oral and written agreements, memoranda, understandings and undertakings between the parties relating to its subject matter and the Customer's standard terms of business, if any.

#### **4. TERM**

4.1. The term of this Agreement commences on the date of this Agreement and continues unless it is terminated pursuant to Clause 14.

#### **5. ORDERING**

5.1. During the term of this Agreement, the Customers may purchase Goods by issuing a Purchase Order.

5.2. Each Purchase Order will, as appropriate:

5.2.1. Be signed by the Customer or its duly authorised representative;

5.2.2. Specify the Goods ordered;

5.2.3. Specify the Price of Goods ordered;

5.2.4. Specify the GST payable;

5.2.5. Specify any details regarding the delivery of the Goods;

5.2.6. Specify the period of supply and any option for the Customer to extend the same; and

5.2.7. Specify the quantity of Goods ordered.

#### **6. PROVIDED DOCUMENTS AND MATERIALS**

6.1. The Supplier reserves all ownership rights and copyrights to all documents or materials, such as offers, calculations, drawings, designs, calculations, prospectuses, catalogues, samples, models, tools and other documents or operating resources etc. Such documents and materials may not be made accessible to third parties unless the Supplier issues its express related written consent to the Customer. They may not be utilised or reproduced by the Customer either for the purposes of third parties or at the instigation or by third parties. To the extent that the Supplier does not accept the Customer's Purchase Order, these documents and materials are to be returned to the Supplier immediately.

#### **7. DELIVERIES AND DELIVERY PERIOD**

7.1. Unless agreed otherwise, the Supplier shall deliver the Goods based on Free Carrier (INCOTERMS 2010 FCA) plant of Supplier.

7.2. Periods and deadlines for deliveries and services to which the Supplier refer shall always be non-binding unless a fixed period or fixed deadline has been agreed expressly in writing.

7.3. The start of the delivery period that the Supplier states as well as a stated delivery deadline shall be conditional upon the timely and proper satisfaction of the obligations of the Customer, including but not limited to all licenses and approvals and the receipt of any agreed prepayment.

- 7.4. Modification or supplementation requests agreed subsequently with the Supplier shall entitle the Supplier – including without specific reservation or specification – in all cases to an appropriate extension of agreed delivery deadlines or delivery periods in favour of the Supplier.
- 7.5. The Supplier is entitled, but not obligated, to make partial deliveries and render partial services deemed reasonable for the Customer. Equally, the Supplier is entitled to execute deliveries and services early, unless expressly agreed otherwise.
- 7.6. The Supplier shall not be liable for an inability to deliver or for delivery delays, to the extent that they have been caused by a Force Majeure Event. Or other unpredictable events as of the date when the Purchase Order was received (including but not limited to operational interruptions of all types, difficulties in procuring materials or energy, transportation delays, strikes, accidents), for which Supplier is not responsible.
- 7.7. Transfer of any risk to the Goods shall be passed to the Customer according to the agreed INCOTERM-2010-provision FCA, Supplier's plant in that risk transfers when the Goods are loaded onto the first carrier. If the delivery location is at another location, then risk transfers from the Seller to the Customer at the time of arrival of the Goods but before the Goods have been off-loaded.
- 7.8. If the Supplier defaults on delivery of the Goods, or if a delivery becomes impossible for the Supplier to fulfil, for whatever reason, the Supplier's liability shall be restricted according to Clause 10 of these terms and conditions.

## **8. PRICES AND PAYMENT**

- 8.1 Unless otherwise agreed in writing, the Supplier's prices for the Goods shall be on the basis of Free Carrier (INCOTERMS 2010 FCA) at the Supplier's plants excluding packaging and plus value added tax at the applicable statutory rates on the Invoice date. Packaging costs for the Goods shall be billed separately.
- 8.2 The Supplier's prices shall be for the Goods and scope of delivery as specified in the Offer from Supplier. Any additional and/or special services shall be invoiced separately.
- 8.3 In the event that the agreed prices are based on the Supplier's list prices, there is no fixed-price arrangement agreed between the parties and delivery of the Goods is not to be effected until after more than four months after the Agreement is concluded, the Supplier's prevailing list prices as at the date of delivery of the Goods shall be applicable (in each case less any agreed percentage or fixed rebate). The Supplier further reserves the right to make the appropriate price adjustments due to changes in costs for wages, materials and distribution for such deliveries.
- 8.4 Payment of Invoices shall be made to the account specified by the Supplier. The Customer shall not make any deductions to the payment of Invoices without the express written consent of the Supplier.
- 8.5 Unless agreed otherwise, the Customer shall pay Invoices within 10 days after delivery of the Goods. The Supplier shall be entitled to levy default interest of 9% above the base rate per annum on any amount outstanding on the Invoice after payment is due.

## **9. RESERVATION OF TITLE**

- 9.1. The reservation of title agreed below shall serve to secure all respective existing current and future receivables due from the Customer arising from the Agreement (including balance receivables from a current account relationship arising from the Agreement).
- 9.2. The Goods delivered to the Customer shall remain the property of the Supplier until all amounts due and owing from the Customer to the Supplier have been paid in full. The Goods as well as the Goods subject to retention of title that replaces it pursuant to the following provisions shall be referred to hereinafter as "Goods subject to retention of title".

- 9.3. The Customer shall store for the Supplier free of charge the Goods subject to retention of title. The Customer shall be obligated to treat with care the Goods subject to retention of title.
- 9.4. The Customer is entitled to process and sell the Goods subject to the Supplier's retention of title as part of its normal business operations provided that pledging, assigning or encumbering of the Goods are prohibited.
- 9.5. If the Customer processes the Goods subject to retention of title, it is agreed that the processing shall occur on behalf of the Supplier and for the Supplier's account and that the Supplier shall directly acquire the ownership or – if the processing occurs from materials of several owners or the value of the processed asset is higher than the value of the goods subject to retention of title – co-ownership (fractional ownership) in the newly created asset in the ratio of the value of the goods subject to retention of title to the value of the newly created asset. In the instance that no such acquisition of ownership should accrue to the Supplier, the Customer shall hereby transfer its future ownership or – in the aforementioned relationship – co-ownership in the newly created asset as collateral to the Supplier. If the Goods subject to retention of title is combined or inseparably mixed with other objects into a combined object, and if one of the other objects is to be regarded as the main object, the Supplier shall proportionally transfer, to the extent that the main object belongs to the Supplier, to the Customer the co-ownership of the combined object in the ratio specified in this Clause 9.
- 9.6. In case of the resale of Goods subject retention of title, the Customer shall assign to the Supplier as security the resultant receivable due from the purchaser – pro rata according to the co-ownership share in the case of the Supplier retaining co-ownership of the Goods subject to retention of title. The same shall apply for other receivables replacing the Goods subject to retention of title or otherwise arising in relation to the Goods subject to retention of title, including but not limited to insurance claims or claims deriving from loss or destruction.
- 9.7. If third parties gain access or possession to the Goods subject to retention of title, including but not limited to assignment, the Customer shall immediately notify the third party that the Goods is the property of the Supplier and inform the Supplier to enable the Supplier to enforce their ownership rights. To the extent that the third party is unable to reimburse judicial or out-of-court costs incurred in this connection, the Customer shall be liable to the Supplier for this.
- 9.8. The Supplier shall in its sole discretion be entitled to release the Goods subject to retention of title as well as objects or receivables replacing it to the extent that their value exceeds the level of the secured receivables by more than 20%. The Supplier shall be able to freely choose the Goods subject to retention of title or objects to be released accordingly.
- 9.9. In the event this Agreement is terminated due to any default on the part of the Customer, the Supplier shall be entitled to reclaim the Goods subject to retention of title.

## **10. EXCLUSION AND LIMITATION OF LIABILITY**

- 10.1. The Goods are supplied on "as is" basis and the Supplier expressly disclaims to the extent permissible by law all warranties other than as provided in this Agreement, conditions or other terms, whether express, implied or statutory, including without limitation, warranties, conditions or other terms regarding merchantability, fitness for a particular purpose, design, condition, capacity, performance and title.
- 10.2. In no event will the Supplier be liable for the following in respect of the supply of the Goods even if it has been advised of the possibility of such damages:
- (a) indirect, incidental, exemplary, special or consequential damages;
  - (b) loss of revenue, profits, goodwill or anticipated sales or savings; or

- (c) any consequential loss (however caused) suffered or incurred by the Customer arising out of or in respect of any breach of this Agreement by the Supplier. This exclusion applies even if the Supplier knew or ought to have known of the consequential loss suffered or may be suffered by the Customer.
- 10.3. Any liability of the Supplier, its affiliates, officers, directors, employees, agents, suppliers and licensors collectively, to the Customer arising out of the supply of the Goods and/or use of the Goods by the Customer whether based in warranty, contract, tort (including negligence), or otherwise, the maximum aggregate liability of Supplier for or in connection with its breaches of the Agreement shall be limited to price of the Goods paid by the Customer.
- 10.4. This limitation of liability is cumulative and not per incident. Nothing in this Agreement limits or excludes any liability that cannot be limited or excluded under applicable law.
- 10.5. This limitation/exclusion of liability will survive any termination of this Agreement.

## **11. WARRANTY AND NOTICE OF DEFECT**

- 11.1. Any Warranty on the Goods shall be conditional Customer having inspected the Goods with due care and without undue delay after delivery by the Supplier. In relation to obvious defects that would be identifiable upon such inspection, such defects shall be deemed to have been accepted by the Customer if the Supplier does not receive any written notification of such defect within ten (10) Business Days after delivery of the Goods. In relation to other defects not identifiable upon inspection as described above, the delivered Goods shall be deemed as approved and accepted by the Customer if the Supplier does not receive any notification of defects within ten (10) Business Days after the date on which the defect was detected; if the defect was already identifiable by the Customer at an earlier date, this earlier date shall form the reference date for the start of the complaint period.
- 11.2. The Supplier's written approval shall be obtained prior to any return of the Goods. Any unauthorised returns shall be rejected by the Supplier and the costs related to such unauthorised returns shall be borne by the Customer.
- 11.3. In the event that Goods which are delivered to the Customer are determined by the Supplier to have inherent manufacturing defects which were already in existence at the time when risk was transferred to the Customer, the Supplier shall at its sole option and subject to the notification of defects in accordance with the provisions of this Clause, to repair the Goods or deliver replacement Goods.
- 11.4. Defect claims shall not apply in the following cases:
  - (a) minor difference from the agreed characteristic;
  - (b) minor diminution of usability;
  - (c) natural wear and tear;
  - (d) any change in the property of the Goods due to the passage of time (e.g. degradation) or wear and tear;
  - (e) any defect or damage arising after the transfer of risk of the Goods to the Customer arising out of erroneous or negligent handling, excessive utilisation, inappropriate operating resources, defective construction works, inappropriate foundations or due to special external influences; or
  - (f) if the Customer or a third party performs any repairs, maintenance works or modifications on the Goods without the prior written consent of the Supplier.

## **12. PRODUCT LIABILITY**

- 12.1. The Customer shall not be permitted to modify the delivered Goods and in the event of any breach by the Customer of this prohibition, the Customer shall defend, indemnify and hold the Supplier harmless against any and all costs, claims, fees (including, without limitations, reasonable legal fees), demands,

proceedings, damages and expenses whatsoever arising out of or in connection with such unauthorised modification(s).

- 12.2. In the event that the Supplier has to recall any Goods, the Customer shall provide all necessary support and assistance to the Supplier for such recall and implement such reasonable measures as instructed by the Supplier to carry out the product recall. The Customer shall be responsible for bearing the costs of any product recall or a warning concerning the Goods if and to the extent that the Customer is responsible for the causing the product recall.
- 12.3. The Customer shall notify the Supplier in writing immediately of any defects in the Goods encountered or occurring and/or any potential product defects or risks when using the Goods upon discovery of such defects or risks.

### **13. FORCE MAJEURE**

- 13.1. If a party ("Affected Party") is wholly or partially unable to perform its obligations because of a Force Majeure Event then it shall promptly notify the other party of its inability to perform and the nature and extent of the circumstances that amounts to a Force Majeure Event.
- 13.2. Subject to compliance with Clause 13.1, the Affected Party's obligation to perform those obligations affected by the Force Majeure Event will be suspended for the duration of the delay arising out of the Force Majeure Event and a reasonable period thereafter from performance.
- 13.3. If a delay arising out of a Force Majeure Event continues or is likely to continue for more than thirty (30) days, the Supplier may at its election, by notice to the Customer and without being liable to the Customer for any damages or compensation whatsoever terminate this Agreement or cancel the Goods affected by the delay.

### **14. TERMINATION**

- 14.1. This Agreement may be terminated by either party upon written notice with immediate effect in the event if the other party suffers an Insolvency Event.
- 14.2. This Agreement may be terminated by the Supplier if the Customer breaches any term of this Agreement and fails to remedy such default within seven (7) days after written notification is given by the Supplier to the Customer of such default. .
- 14.3. This Agreement may be terminated by the Supplier for convenience without having to assign any reason therefor by giving the Customer thirty (30) days prior written notice of its intention to terminate and the Customer shall not have any claim for any compensation, damages or loss whatsoever.

### **15. SETTLEMENT OF DISPUTES**

- 15.1. The Parties have entered into this Agreement in good faith and agree to resolve differences or disputes between them amicably. However, if any such difference or dispute cannot be resolved within sixty (60) days from the date the difference or dispute arises then the aggrieved Party may refer the matter to mediation by an independent person appointed by the Singapore Mediation Centre and both Parties agree to participate in the mediation in good faith and undertake to abide by the terms of any settlement reached. If the dispute cannot be resolved by mediation within ninety (90) days, the dispute shall be referred to and finally resolved by arbitration in Singapore according to the Arbitration Rules of the Singapore International Arbitration Centre for the time being in force which rules are deemed to be incorporated by reference into this Clause. The Tribunal shall consist of three (3) arbitrators to be appointed according to Rules of the Singapore International Arbitration Centre. All arbitration proceedings shall be in the English language. The decision of the arbitrator shall be final and binding on all the Parties.

### **16. NO ASSIGNMENT**

- 16.1. The rights and obligations arising out of this Agreement shall not be assignable or transferable by the Customer without the prior written consent of the Supplier.

**17. CONFIDENTIALITY**

- 17.1. Each Receiving Party shall keep strictly confidential Confidential Information that may come to their knowledge or possession during the negotiation or subsistence of this Agreement.
- 17.2. Neither party shall use or disclose any Confidential Information other than for the proper performance of its obligations under this Agreement. The obligations of confidentiality herein shall not apply where the Confidential Information:-
- (a) becomes generally available to the public through no act or default on the part of either party or their representatives;
  - (b) is obtained from a third party in good faith without breach of any obligation of confidentiality owed to the other party; or
  - (c) is required to be disclosed by law or by order of a court or of an administrative or regulatory body of competent jurisdiction.
- 17.3. The burden of proof for the existence of any of the above exceptions shall be borne by the respective Receiving Party.
- 17.4. This Clause 17 shall continue to have effect regardless of the termination of this Agreement for whatever reason.

**18. MISCELLANEOUS**

- 18.1. This Agreement shall benefit and be binding on the Parties, their respective successors and any permitted assignee or transferee of some or all of any Party's rights or obligations under this Agreement. Any reference in this Agreement to any Party shall be construed accordingly.
- 18.2. This Agreement, and all rights and obligations hereunder, may not be transferred, assigned or novated by the Supplier without the prior written consent of the Supplier.
- 18.3. No failure on the part of any party to exercise, and no delay on its part in exercising, any right or remedy under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.
- 18.4. The illegality, invalidity or unenforceability of any provision of this Agreement under the law of any jurisdiction shall not affect its legality, validity or enforceability under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision.
- 18.5. The parties do not intend that any term of this Agreement should be enforceable by virtue of the Contracts (Rights of Third Parties) Act (Cap.53B) or otherwise, by any person who is not a Party to this Agreement.
- 18.6. This Agreement, where applicable may be signed in any number of counterparts, all of which taken together and when delivered to the Parties by facsimile or by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by a combination of such means, shall constitute one and the same instrument. Any party may enter into this Agreement by manually signing any such counterpart transmitted electronically or by facsimile or other electronic signature (such as Adobe Sign) by any of the parties to any other party and the receiving party may rely on the receipt of such document so

executed and delivered by facsimile or other electronic means as if the original had been received. Such signatures executed by way of facsimile or other electronic means (such as Adobe Sign) shall be recognised and construed as secure electronic signatures pursuant to the Electronic Transactions Act (Cap 53B) and that the parties accordingly shall deem such signatures to be original signatures for all purposes.

- 18.7. This Agreement sets forth the entire agreement and understanding between the parties in connection with the matters dealt with and described herein and, supersedes all prior oral and written agreements, memoranda, understandings and undertakings between the parties in connection with the matters dealt with and described herein
- 18.8. Nothing in this Agreement shall constitute a partnership or establish a relationship of principal and agent or any other relationship of a similar nature between or among the parties.