

General Conditions for Services

1. Coverage of the General Conditions for Services in Switzerland ("GCS")

- 1.1 The GCS, in principle, govern all business relations between **VAPEC** AG ("**VAPEC**") and the **customer** with respect to services.
- 1.2 The GCS only apply to assembling, putting into operation, supervision, inspection, removal of defects, repairs, revisions and technical support of the installations ("services"). In case supplies take place simultaneously with the "services", the General Conditions for Supplies of **VAPEC** apply (Enclosure 1).

2. Creation of the Agreement

- 2.1 The order is always based on a written and detailed offer by **VAPEC** for the respective services. An order is considered to be given and binding as soon as **VAPEC** has made out the written confirmation of the order and either the first instalment payment made by the **customer** has been credited to the account of **VAPEC** and/or an agreement concerning the financing has been concluded and/or a promise to pay by a bank has been provided.
- 2.2 Within the framework of the written confirmation of the order, the **customer** and **VAPEC** agree upon a date of the execution of the services. Possible delays for the execution of the respective services begin with the delivery of the confirmation of the order by **VAPEC**, the counter-signing and fulfilment of the financial obligations by the **customer** in due time. Where the payments by the **customer** happen to be delayed, the date of the execution of the services is postponed at least in the corresponding extent.

3. Specification of the services and their modifications

- 3.1 **VAPEC** in principle renders the services according to the GCS and the written confirmation of the offer by **VAPEC**, which are considered as basis of the conclusion of the respective individual order.
- 3.2 If the **customer** wants to alter the coverage or order additional services, **VAPEC** will adapt the offer correspondingly and make out a complementary confirmation of the order.
- 3.3 In the case of repairs, maintenance and revision, **VAPEC** can submit the **customer** modifications of the services offered if the present state of the installation necessitates such a modification. If the **customer** rejects the modification of the coverage of the services, he is solely responsible for the resulting consequences in every respect.
- 3.4 Where services defined in the confirmation of the order are modified, **VAPEC** makes out an altered confirmation of the order which defines the altered coverage with respect to costs and date of execution and is to be counter-signed by the **customer**.
- 3.5 If as consequence of a modification the fulfilment of an order is made difficult or becomes restricted, in particular if such modification causes a change of the price of execution and/ or date of execution, the parties are obliged to make out a reasonable confirmation of the order which defines the fundamental technical changes, price of execution and/or date of execution and which is to be signed/counter-signed. The **customer** is obliged to accept a fair and comparable offer by **VAPEC** by counter-signing it.
- 3.6 During the execution of the services, **VAPEC** is entitled to change its performance, as far as this is becomes necessary for technical reasons such as e.g. change of technical standards, laws and other provisions made by private or public law, without the ordered services being impaired.
- 3.7 **VAPEC** is entitled, with the consent of the **customer**, to have the contractually agreed services, wholly or partially, executed by a professionally qualified sub-contractor. If **VAPEC** transfers the execution of the services to such a professionally qualified sub-contractor, **VAPEC** is exclusively liable for its careful choice, instruction and supervision.

4. Duties of the customer

- 4.1 The **customer** is obliged to all necessary arrangements for the execution and to take care that the ordered services can begin on due time and be executed without interruption. Moreover, the **customer** is also obliged to apply in time for all of the necessary permits by private and/or public law required for the execution of the services. The **customer** is obliged to inform **VAPEC** without delay when the execution of the ordered services can be started.
- 4.2 The **customer** is obliged to prepare at its own cost all preparatory work such as access to premises, spaces for storage, construction services, etc. for the professional execution of the services in due time as defined in the confirmation of the order.
- 4.3 The **customer** puts at the disposal of the employees of **VAPEC**, without consideration, all necessary installations and facilities required for the execution defined in the confirmation of the order in the immediate vicinity of the place where the services are to be executed.
- 4.4 If the **customer** fails to prepare the arrangements required for the execution of the services as set forth in the confirmation of the order, the contractually agreed date of the execution of the services is postponed accordingly, and **VAPEC** is entitled to fix an appropriate new date of execution.
- 4.5 Should the employees of **VAPEC** be hampered in the execution of the services for reasons which are not acceptable or be kept back at the workplace after the execution of the services, all resulting costs have to be borne by the **customer**.
- 4.6 The **customer** is responsible for taking all measures so the employees of **VAPEC** can execute their services under flawless conditions. The **customer** is obliged to immediately and completely inform **VAPEC** of special execution conditions, in particular in connection with accident, health and other risks.

4.7 The **customer** warrants that all machines to be worked on and other equipment required in connection with the execution of the services are free from asbestos. Should **VAPEC** discover asbestos in the course of the execution of the services, **VAPEC** is obliged to immediately inform the **customer** and to stop their work. In this case, the **customer** is obliged to have the asbestos removed immediately. If the removal of the asbestos and its disposal is not carried out within one month, **VAPEC** is entitled to give notice and withdraw from the order against full compensation of all costs accrued (inclusive of mobilisation and demobilisation). In case employees or called in third parties claim damages and/or compensation on account of the presence of asbestos and these claims are justified or on account of professional contestation are allotted to **VAPEC**, the **customer** is obliged to honour all claims, in particular court fees and/or compensation of the parties and the costs connected therewith.

5. Execution of the order

5.1 The employees of **VAPEC** carry out their work according to the instructions given by the project manager of **VAPEC** and are not entitled to accept instructions given by the **customer**. The **customer** is obliged to discuss possible instructions in relation to the execution with the respective project manager of **VAPEC**.

The employees shall be informed of possible instructions and/or instructions in connection with the execution of the order by the respective project manager of **VAPEC**.

5.2 The **customer** is aware that only the written confirmation of the order is conclusive and that **VAPEC** is not committed or cannot be made committed by possible consent expressed or statements made by employees as long as **VAPEC** does not make out a written additional document to the confirmation of the order and have it counter-signed by the **customer**.

5.3 The **customer** is obliged to examine materials that are to be mounted by **VAPEC** in the presence of employees of **VAPEC** before work is begun concerning completeness and existence of possible defects and to store these materials professionally until the execution of the order is started. The **customer** is obliged to replace damaged or stolen material at its own costs and in addition to compensate possible additional work and an increase of expenses by **VAPEC**.

5.4 The price fixed in the confirmation of the order relates to the execution of the services without interruption and any kind of obstruction. The **customer** is obliged to refund possible increased costs in their entirety which are caused by changes of the scheduled dates, waiting times, additional services, etc. and were borne by **VAPEC**.

6. Accounting based on rates per hour and/or day

6.1 Services which are based on rates per hour and/or day are recorded in a report which is to be signed by the **customer** and the account is established according to the following rules for accounting.

6.2 The time for the preparation of the execution of the services, the time of the journey to and from the place of the execution, time for local transport, settling formalities etc. are considered as working time are brought to account according to the rates per hour and rates per day and based on a corresponding work report as it is set forth in the confirmation of the order. Travelling expenses of the employees of **VAPEC** are separately accounted for and are to be paid by the **customer**.

6.3 By signing the work report referred to in ciph. 6.2, the **customer** approves the time required for the execution of the services by the respective employee.

6.4 The **customer** is obliged to pay the complete costs for transport, insurance and delivery of tools and equipment of **VAPEC**

7. Conditions of payment

7.1 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. 7.2 apply.

7.2 The **customer** is obliged to pay into an account determined by **VAPEC** 30% of the agreed price for the services plus the legal VAT within 10 days after counter-signing the confirmation of the order and 70% within 10 days after the approval of the completed services.

7.3 The **customer** is not entitled to make any deductions for minor shortcomings of the services or to delay part-payments.

8. Default of VAPEC

8.1 In case **VAPEC** is guilty of not meeting the arranged dead-line for the execution of the services or if defects occur for which **VAPEC** is responsible, **VAPEC** is obliged to pay the **customer** a lump sum default compensation of 0.5% of the net price of the services plus the legal VAT for each delay of a complete week. The **customer** confirms that by paying this default compensation, the **customer** has settled all direct and/or indirect default claims.

8.2 The **customer** is not entitled to claim a default compensation if it is partly or wholly liable for the default.

9. Default of the customer

9.1 If the **customer** does not 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**.

10. Approval of the services

- 10.1 After the execution of the services, **VAPEC** will carry out an approval procedure as provided in the confirmation of the order and put down the result in a written report which is to be signed by both parties.
- 10.2 The approval is, in any case, considered as being executed after the first day of operation with the **customer** or 8 days after the arranged date for the approval if the **customer** has to declare that it was not possible to carry out the ordinary approval procedure.

11. Force majeure

- 11.1 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.
- 11.2 If **VAPEC** bases itself on force majeure, it is obliged to inform the **customer** in writing and without delay, at the latest within 7 days after having knowledge of the event which frees **VAPEC** from liability. If a contractually provided service 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 **VAPEC** 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 rescission of the contract.

12. Warranty and liability

- 12.1 **VAPEC** warrants vis-à-vis the **customer** that the services are carried out carefully and professionally.
- 12.2 The **customer** is obliged to examine the services of **VAPEC** without delay and to reprove in writing possible defects within 7 days from the date when the services were executed with **VAPEC**. In case the **customer** calls in another firm for services, **VAPEC** is released from any liability. The obligation of warranty of **VAPEC** is conclusively set forth in ciph. 12.
- 12.3 **VAPEC** exclusively warrants the services which are defined in the confirmation of the order. Where the warranty concerning services with certain specific parts of an installation is restricted to the services which are defined in the confirmation of the order and in no case covers the whole of the installation.
- 12.4 **VAPEC** waives the warranty for services at the installation which were carried out by the **customer** or a third party and are executed without previously having been discussed or arranged with **VAPEC**. The warranty is also annulled in the case of manipulation or faulty maintenance by the **customer** and/or a third party or where the instructions given by **VAPEC** were not kept or observed as well as where the **customer** neglects to carefully observe the given regulations for the operation and the maintenance of the installation.
- 12.5 **VAPEC** is not liable for the execution of services by third party sub-contractors who had been professionally selected, instructed and supervised.
- 12.6 The liability of **VAPEC** for defective services is exclusively restricted to the gratuitous repair of these defects with services which are defined in the confirmation of the order. The **customer** is aware and agrees that **VAPEC** is not liable for the interruption of the operation of the installation and its consequences for the **customer** as e.g. not being able to meet obligations vis-à-vis third parties, any other direct or indirect damage, and that **VAPEC** freely defines the corresponding extent of the warranty.

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 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.