

General Purchasing Conditions



1. Scope of Validity

- 1.1 The terms and conditions of purchase stated herein shall apply to any order that is placed by us as part of a Supplier relationship. Any of the Supplier's own terms or conditions to the contrary of or in amendment to these GPCs shall be excluded from validity for transactions with us, even though we may not have expressly contradicted their contents.
- 1.2 On acceptance of a purchase order, or upon delivery of goods we have ordered at the latest, the Supplier will be deemed to have accepted our terms and conditions and none of his own terms and conditions other than or in addition to these GPCs shall become part of a contractual relationship.

2. Purchase Orders

- 2.1 Our purchase orders shall not be firm and binding, unless issued in written form. Any oral or telephone order will be non-binding and shall require our written confirmation. Similarly, all amendments, modifications of a purchase order, and any collateral agreement, shall be compiled in writing in order to be effective.
- 2.2 A purchase order which has been issued on our part must be promptly accepted by the Supplier in writing. An order acknowledgement with any variation to our purchase order will be deemed to constitute a new offer that requires our written acceptance. Under no circumstances shall our silence regarding an order acknowledgement with varying contents be deemed to constitute an implied acceptance.

3. Date of Delivery

- 3.1 Goods to be delivered shall arrive at their designated shipping address and commissioned work services shall be ready for Vistec Electron Beam acceptance by the agreed delivery date. The Supplier will notify us immediately on becoming aware of any inability to comply with a delivery or manufacturing due date. A notice of this kind shall not release the Supplier from his obligation to provide a timely delivery.
- 3.2 In the event and to the extent of a Supplier's default, we shall be compensated for the resulting damage. Damages due to default shall be payable on flat-rate terms agreed as follows:

We may charge 0.5% and not more than 5.0% of the agreed purchase order net sum as liquidated damages for each day in default. Compensation can be charged at this rate until final payment has been received, provided however that the Supplier may, at any time, deliver proof that no or little damage has been caused to us. Conversely, we may, at our discretion, demand compensation of higher damages if in a position to document such higher damages.

4. Shipment, Transfer of Title, Transport & Packaging Materials

- 4.1 Goods shall be dispatched in strict compliance with designated shipment addresses. Each shipment shall include a copy of the delivery note stating specific Vistec Electron Beam GmbH reference and ordering codes along with the date of order placement. In addition, a shipping address must contain the particular order number that has been assigned by our purchasing department.
- 4.2 Title of ownership of goods delivered to us, or items or products manufactured for us (referred to as "Delivery Items" hereafter), by the Supplier shall pass to us at the moment of a Delivery Item's arrival at the shipping address. Any retention of title declared by the Supplier will be null and void in all cases.
- 4.3 The Supplier will be required to take back all transport and packaging materials (referred to as "Packaging Material" hereafter) if requested to do so by us. Packaging Material exhibiting adherence to unhealthy or environmentally dangerous substances or preparations must always be taken back by the Supplier. Any cost which may have been incurred in connection with the disassembly of Packaging Material and related shipment to the Supplier will be at the Supplier's expense.

5. Manufacturing & Performance of Service

- 5.1 Delivery Items shall be supplied and contract services carried out strictly following the specifications, calculation sheets, drawings, plans or models we have issued or approved and taking relevant statutory and official provisions into account, including - but not limited to - the German Work Equipment Act, applicable accident prevention regulations, other workplace safety requirements, relevant VDE (*German Electrotechnology Association*) provisions and generally established rules of safety engineering and occupational health. Where performance to applicable statutory or official provisions is found to require a deviation against the specifications, calculation sheets, drawings, plans or models we have issued or approved, the Supplier shall promptly notify us in writing. If such notice concerns more than just a non-essential deviation, we may, at our discretion, rescind the contract.
- 5.2 The Supplier will be under obligation to make every member of staff reporting to him aware of the contents of applicable provisions named in section 5.1 above. He shall also supervise measures adopted to ensure the safety of personnel.
- 5.3 Where it is the Supplier's task to mount an ordered Delivery Item, he shall inform himself about the location and the condition of the designated site of installation.

6. Inspection & Acceptance

- 6.1 We may, at our discretion, inspect any of the Supplier's processes for manufacturing a Delivery Item or fulfilling contractual services or have this done by our appointed representatives at any time during normal business hours, provided that we have given prior notice hereof duly in time. However, any such inspection will not relieve the Supplier of his sole responsibility for delivery or performance as stipulated in the contract.
- 6.2 Regarding the condition, type, quantity and weight of a shipment, the values which have been determined in the process of incoming goods inspection will be decisive. We may, at our discretion, reject excess delivery or short delivery if established official limits of tolerance are found exceeded.
- 6.3 Unless otherwise agreed, acceptance will be at the shipment address location specified in our purchase order. Prior inspection in accordance with section 6.1 or qualification testing according to section 6.2 shall not be equivalent to acceptance. Acceptance must be stated in express terms and will not be deemed as effective, unless confirmed by us in writing.

7. Prices

- 7.1 Unless otherwise agreed in writing, prices will be understood to include carriage paid to the shipment address plus packing. We have valid transport insurance coverage and will assume none of the Supplier's extra costs for this reason.
- 7.2 Any change in pricing shall require our written approval.
- 7.3 Unless otherwise agreed in writing, payment will be made on the fifteenth day of the month following the month of delivery with the deduction of a 3% discount or within 90 days from receipt of goods or invoice without deduction. For traceability of timely payment, the date on our bank payment instruction shall be decisive.

8. Invoicing

Each invoice shall be made out in duplicate, addressed to Vistec Electron Beam GmbH and delivered by separate mail. An invoice must contain all details specified in section 4.1.

9. Documentation & Confidentiality

All calculation sheets, drawings, plans, models or other documentation which is placed at the Supplier's disposal for the fulfilment of our purchase orders will remain our property. None of these materials may be used for any purpose other than that agreed under the valid contract; they shall further be treated with particular care as necessary to protect business secrets and not be forwarded to third parties unless our prior written approval has been procured. On completion of a contract, all documentation disclosed hereunder, including copies and reproductions thereof, shall be surrendered to us.

10. Third-Party Property Rights

- 10.1 The Supplier will be held liable in the event of claims asserted for alleged infringement of an intellectual property right, whether granted or filed, as a result of the conforming use of a Delivery Item (referred to as "Intellectual Property Rights" hereafter), provided that, at least, one property right in a state of infringement must have been published either in the Supplier's home country or by the European Patent Office or in any EU member state, including Switzerland.
- 10.2 The Supplier shall absolve us and any of our clients and provide indemnification in the case of any claim that is made in connection with the use of such Intellectual Property Rights.
- 10.3 This shall not apply if, and to the extent that, the Supplier can prove to have manufactured a Delivery Item in accordance with the drawings, models or other equivalent descriptions or specified details we had placed at his disposal and that he had no possibility of becoming aware of an infringement of Intellectual Property Rights by his product development.
- 10.4 The Contracting Parties agree to notify each other immediately on obtaining knowledge of a potential risk of infringement or the alleged infringement of a property right, in order to be able to pursue coordinated action against relevant claims for liability.

11. Breach of Duty through Poor Performance

- 11.1 In respect of any Delivery Item, the Supplier shall provide an unrestricted warranty as to the selection of material that is best suited to such Delivery Item, further that its quality conforms to relevant drawings, samples and product types and in terms of effective engineering design. In addition, the Supplier shall provide an unrestricted warranty that a Delivery Item includes no fault of a kind that might impair its value or fitness for use, meets the terms, conditions and other specifications of the relevant purchase order, as well as quoted performance features, complies with applicable provisions of statutory law and governmental requirements and is free from defects.

The Supplier shall absolve and indemnify us in the event of any claim for compensation of damage suffered by a third party due to product faults resulting from causes in his own domain of control and organisation. The Supplier shall also refund any cost we may have incurred in connection with product recall campaigns launched for such reasons.

- 11.2 The Supplier's liability in connection with claims for defects is in agreement with customary terms and conditions in this trade, covers, however a minimum period of 24 months, and is understood to commence at the time of delivery and – in the event of capital goods produced – at the time of acceptance. Obvious defects can be notified within two weeks of arrival of a goods shipment at the specified shipping address, hidden faults within two weeks following their detection. A notice of defects dispatched to the Supplier will be deemed as adequate proof of compliance with these deadline requirements.
- 11.3 No payment or acceptance will constitute an acknowledgement of delivery free from defects.
- 11.4 In respect of defects which are notified in a timely manner, we may, at our discretion, grant an adequate reduction in price depending on the particular type of contract and taking other relevant conditions into account, demand re-performance (rework or replacement or provision of spare part(s) at no extra cost), return a faulty Delivery Item to the Supplier at the Supplier's cost and demand the delivery of a faultless replacement at the Supplier's cost, remedy a faulty Delivery Item at the Seller's cost by our own resources or exchange it against a replacement

procured through other channels, demand the compensation of all costs incurred in the replacement of faulty parts should the Supplier fail to meet our request within a reasonable grace period, withdraw from the contract or demand compensation of damage. The foregoing rights can be asserted selectively or, to the extent permitted by law, used one beside the other.

- 11.5 The warranty period will be deemed as suspended for the time of rework. Upon the delivery of replacement goods, a new warranty period begins. The limitation period for a warranty claim will be halted, as long as the Seller has not served final written rejection of our timely notice of defects.

12. Force Majeure

Force majeure, labour disputes, riots, governmental action or other unforeseeable, serious events beyond one's control will relieve the contracting parties from their contractual duties for as long as such circumstances or impediments last and to the extent they have an impact on contract fulfilment. This will also apply if such events occur at the time when an affected contracting party is in a state of default. Either party shall furnish necessary information as may be reasonable from case to case and adapt its contractual fulfilment to such change in situation acting in good faith.

13. Compensation

We may, at our discretion, offset any of the Supplier's receivables from us with any amount that may be payable to us by the Supplier.

14. Assignment

Contractual rights and, notably, a Supplier's claim for payment, may not be assigned or pledged, whether collectively or individually, fully or partly, unless our express approval has been obtained. Our approval cannot be refused unless such refusal is based on an eligible interest.

15. Final Provisions

- 15.1 This contractual relationship between the Supplier and Vistec Electron Beam GmbH will be governed by the law of the Federal Republic of Germany, waiving the provisions of the Vienna United Nations Convention On Contracts For The International Sale Of Goods (UNCITRAL).
- 15.2 Should one or more of the foregoing terms and conditions, or parts thereof, be held to be ineffective or impracticable, or become ineffective or impracticable after the contract validation date, this shall not affect the balance of provisions. An ineffective or impracticable provision shall be replaced by the contracting parties with an effective and practicable one that comes closest to the ineffective or impractical provision in terms of the economic result that had been pursued by the parties through such provision. The same will apply if this contract is found to contain one or more legal gaps. The contracting parties hereby agree on a complete waiver of article 139 of BGB (*German Civil Code*) rather than a mere reversal of the burden of proof.
- 15.3 The place of fulfilment for any obligation under this contract will be Jena.
- 15.4 If, and to the extent that, the Supplier is a merchant or changes his residence after the contract signing date or his permanent dwelling is not known at the moment a lawsuit is filed, Jena will be the agreed legal venue in any of these cases.

Vistec Electron Beam GmbH