

# General Terms and Conditions VITLAB GmbH

## 1. General

- 1.1 These General Terms and Conditions (GT&C) are intended for use in commercial transactions between businesses.
- 1.2 These GT&C shall apply for all, including future, contracts with the customer. Other terms and conditions shall not become part of the contract, even if VITLAB does not expressly object to them. Amendments to and changes of the contract must be in written form. The waiver of the requirement for written form shall only be possible in writing. This shall not apply to individual contractual agreements. The language of the contract shall be German and/or English. In the event of a discrepancy between the German language version of these GT&C and a version in any language, the German language version shall prevail.
- 1.3 VITLAB offers are subject to change and non-binding. VITLAB reserves the right to make technical improvements to VITLAB products.
- 1.4 VITLAB may electronically store and process data necessary for the purpose of processing the contract.
- 1.5 A set-off by the customer shall not be permitted unless the counterclaims are undisputed or legally established, or pecuniary counterclaims arising from the right to refuse payment pursuant to Section 320 Bürgerliches Gesetzbuch (BGB) (German Civil Code).
- 1.6 Orders with a goods value of below € 250 shall be subject to a minimum order surcharge of € 50. Delivery shall be undertaken generally in packaging units (PU) according to the currently valid price list. For deliveries within five (5) working days or for order values up to € 500, VITLAB reserves the right to waive an order confirmation.
- 1.7 For commercial transactions with customers having no general place of jurisdiction in Germany and between businesses, public law persons or special funds under public law the place of jurisdiction shall be the court responsible in Aschaffenburg, Germany. VITLAB shall also be entitled to appeal to the court responsible for the head office of the customer. VITLAB shall, furthermore, as plaintiff have the right to invoke the Arbitration Court at the Chamber of Commerce and Industry in Frankfurt am Main, Germany. The Arbitration Court shall, in this case, make the final judgment in accordance with the Rules of Arbitration of the Chamber of Commerce and Industry in Frankfurt am Main without recourse to the ordinary courts of law. The instigation of legal dunning proceedings by VITLAB shall not signify the exertion of its right of choice; it shall be admissible in all cases.
- 1.8 German law shall apply exclusively under the exclusion of the conflict of laws principles of Private International Law and the UN Convention on Contracts for International the Sale of Goods (CISG).

## 2. Delivery

- 2.1 The place of performance shall be the factory of VITLAB in Großostheim, Germany. The risk shall transfer to the customer when the goods for delivery are packed and ready for pick-up (EXW (Incoterms® 2010 ex works)). This shall also apply to partial deliveries or where VITLAB has performed additional services, such as shipping; costs for transport, packaging or insurance; exportation and installation. This shall also apply in case of delivery to a consignment warehouse of the customer.
  - 2.2 Insofar as VITLAB has agreed to orders on call, the customer must take delivery prior to the agreed date, otherwise within six (6) months.
- ### 3. Delivery Period, Force Majeure, Delay
- 3.1 Delivery times shall be ex works. Delivery periods or delivery dates are subject to the customer providing relevant information and documents such as drawings, permits or approvals, opening letters of credit as agreed, making agreed advanced payments and complying with any obligation on time. In particular, the customer is obliged to immediately provide all information required for export, import or shipment (e.g. final recipient, final destination and intended use), documents, approvals and certificates which may be required for the fulfillment of VITLAB's obligations. If delays occur due to required approval, examination or information procedures, delivery periods and delivery dates shall be extended accordingly if VITLAB is not solely responsible for the delay.
  - 3.2 Delivery shall be subject to VITLAB receiving its own supplies punctually and in good order.
  - 3.3 If delays of delivery periods are due to Force Majeure, e.g. natural disasters, mobilization, war, riot or similar events beyond control of VITLAB, e.g. strike or lock-out, delivery periods shall be extended by the time during which the aforementioned event or its effects persist.
  - 3.4 VITLAB shall immediately inform the customer about delivery barriers or delays and their expected duration.
  - 3.5 VITLAB shall be considered to be in default of delivery only if the customer has issued VITLAB with a reminder, has set a reasonable extension period which has elapsed. The customer shall be obliged to immediately inform VITLAB in writing of any likely consequences of delay.
  - 3.6 In the case of delay damages, VITLAB's liability for compensation shall be limited to 10% of the value of the delayed delivery/service. The limitation shall not apply in cases of willful intent, gross negligence and/or injury to life, limb or health.

## 4. Prices, Terms of Payment

- 4.1 Prices shall be EXW (Incoterms® 2010 ex works) Großostheim and exclusive of statutory VAT, if applicable. Costs of packaging, transportation, freight and insurance shall be borne by the customer. Prices shall also be exclusive of the cost of returning and recycling/dispersing of old equipment.
- 4.2 Invoices shall be payable to VITLAB account in EUROs (€) without deductions and free of charges and expenses. Payment shall be made immediately or by the date stated. The determinant factor shall be the receipt of payment. Cheques and bills of exchange shall only be accepted on account of performance and at the cost of the customer.
- 4.3 In the case of customers, with whom VITLAB is working for the first time or with whom VITLAB does not work regularly, after delay in payment or in the case of reasonable doubt as to the creditworthiness of the customer, VITLAB shall reserve the right to make individual deliveries dependent on a pre-payment or a security deposit to the value of the invoice amount.
- 4.4 Should the period between conclusion of contract and agreed delivery exceed four (4) months, so may VITLAB, at its discretion, demand a reasonable additional charge equivalent to the increase in its costs up until delivery. 4.5 In the case of an agreed return of goods that are free of defects, the customer shall be charged a checking and processing fee of 20 % of the invoice amount (minimum € 50).
- 4.6 Should the customer be in arrears with payment, VITLAB debt claims against him shall be due immediately, and VITLAB shall not be obliged to make any further deliveries based on current delivery contracts.
- 4.7 If payment is delayed, VITLAB shall charge – notwithstanding further damage compensation claims – interest on arrears at the statutory rate.
- 4.8 VITLAB may offset amounts payable to the customer (e.g. from credit notes) against VITLAB claims against the customer.

## 5. Retention of Title, Assignment of Future Claims

- 5.1 The goods delivered shall remain property of VITLAB until the complete and unconditional payment. Should VITLAB still have further claims against the customer arising from the business relationship, VITLAB shall then retain its property rights until payment of such claims has been effected.
- 5.2 The customer may neither use goods subject to retention of title nor combine them with other objects to which a third party may have rights. Should, however, goods subject to retention of title become, through their combination with other objects, part of a new (complete) item, VITLAB shall be a proportional co-owner of this new item directly, even if this latter component is regarded as the main component. VITLAB'S proportion of co-ownership shall be determined by the ratio of the invoice value of the goods to the value of the new item at the time of combination.
- 5.3 The customer may resell goods subject to retention of title in the course of his normal business as long as he has not assigned, pledged or otherwise encumbered his claims from the resale.
- 5.4 The customer shall assign to VITLAB in advance as collateral any claims against his customers from the resale of the goods subject to retention of title (see Clause 5.3) and/or newly formed items (see Clause 5.2) to the value of VITLAB's invoice for the goods subject to retention of title. As long as the customer is not in default of payment for the goods subject to retention of title, he may collect the assigned claims in the ordinary course of business. He may, however, only use the proportional proceeds for the payment to VITLAB for the goods subject to retention of title.
- 5.5 At the customer's request, VITLAB shall release collateral at its discretion if and to the extent that the nominal value of the collateral exceeds 120% of the nominal value of our outstanding debt claims against the customer.

- 5.6 The customer shall be required to inform VITLAB immediately of any attachments, seizures or any other third-party dispositions relating to the goods that are reserved or co-owned by VITLAB.
- 5.7 In the event of delay in payment, failure to pay bills of exchange or cheques, or failure or recall of a payment made via SEPA Direct Debit Scheme, suspension of payments or insolvency of the customer or of the end buyer, the rights of the customer under Clause 5.3 shall no longer be valid. The customer must then immediately inform the buyer of VITLAB'S extended retention of title; he may use the proportional proceeds relating to the assignment only to pay for the delivered goods. VITLAB shall be entitled to collect the assigned receivables itself.
- 5.8 In the event of customer's culpable breach of contractual obligations, in particular for the cases covered in Clause 5.7, VITLAB shall be entitled to withdraw from the contract and/or, without withdrawing from the contract, demand the return of any goods subject to retention of title still in possession of the customer and to collect the assigned receivables itself. In order to ascertain the rights of VITLAB, VITLAB shall be entitled to have all of customer's documents/books concerning the reserved rights examined by a person who is subject to the professional duty of confidentiality.

## 6. Warranty, Limitation of Liability

- 6.1 VITLAB warrants that its delivered goods (including any agreed installation) are free of defects at time of risk transfer. The required quality, durability and use of VITLAB'S delivered goods are based solely on the agreed written specification, product description and/or operating manuals. Any information beyond this, in particular in preliminary discussions, advertising and/or referencing industrial standards shall only become part of the contract if they are expressly referenced in writing.
- 6.2 Should the customer require the delivered goods for purposes other than those agreed, he must take responsibility himself for examining their special suitability for this – also in terms of product safety – and ensure their compliance with all relevant technical, legal or regulatory provisions before the intended use. VITLAB shall not be liable for any usability that was not expressly confirmed by VITLAB in writing. In the case of material or design requirements of the customer, VITLAB shall accept no liability for the suitability or permissibility of the desired materials or designs. Compliance with safety-related and occupational health regulations depends on the location and operating conditions of which VITLAB has no prior knowledge. Action for ensuring compliance shall therefore be the responsibility of the customer or his buyer.
- 6.3 VITLAB shall not be liable for the consequences of improper handling, use, maintenance and operation of the delivered goods; the consequences of normal wear and tear, in particular of wearing parts, such as pistons, seals, valves; the breakage of glass, plastic or ceramic parts; for the consequences of chemical, electrochemical or electrical influences; or non-observance of the operating instructions.
- 6.4 If a notice of defect is justified, VITLAB shall initially only be required to provide cure. Any such cure shall be, at the discretion of VITLAB, either rectification of the defect or delivery of goods free of defects. Further warranty claims shall only apply in the event of rejection, impossibility or failure of the cure. If cure is possible only at disproportionate expense pursuant to Section 439 Para. 4 BGB (German Civil Code), VITLAB will bear the cost necessary for the cure according to Section 439 Para. 2, 3 BGB (German Civil Code) up to a limit of 150 % of the value of the delivered goods free from defects.
- 6.5 The customer must, immediately upon receipt of the goods, inspect them carefully, also in terms of product safety, and notify obvious defects immediately in writing; any hidden defects must be immediately notified upon discovery. The customer must notify the carrier immediately of any transport damage. Failure to observe the testing and notification obligation shall void any customer claims for defects.
- 6.6 VITLAB'S liability for slight negligence shall be limited to claims for injury to life, limb or health, to claims under the Produkthaftungsgesetz (German Product Liability Act) or to claims of culpable breach of fundamental contractual obligations through which the purpose of the contract is endangered. Otherwise, our liability for slightly negligent breach of fundamental contractual obligations is limited to the typically occurring damages which VITLAB could have foreseen when the contract was concluded.
- 6.7 Should the customer use the delivered goods in conjunction with environmentally harmful, toxic, radioactive or otherwise hazardous materials, he must notify VITLAB about any such materials and decontaminate the delivered goods prior to returning them to VITLAB. If applicable, VITLAB may charge any necessary costs for decontamination/cleaning and disposal to the customer's account.

## 7. Limitation Period

The warranty period shall be one year and starts from the date of delivery of the goods to the customer. The same shall apply for claims for damages, irrespective of their legal basis. The limitation periods of Section 438 Para. 1 Nos. 1 and 2 and Section 634a Para. 1 No. 2 of the BGB (German Civil Code) shall remain unaffected. The warranty period for any rights of recourse pursuant to Section 445a BGB (German Civil Code) shall be one year and starts from the date of delivery of the goods to the customer. The suspension of expiry pursuant to Section 445b BGB (German Civil Code) shall end no later than three years after VITLAB has delivered the goods to the customer. The restrictions of the limitation periods shall not apply to claims based on fraudulent concealment of a defect, for claims under the Produkthaftungsgesetz (German Product Liability Act) or for damages resulting from injury to life, limb or health and other damages based on intent or gross negligence. The limitation period in respect of replaced or repaired goods shall only commence anew if VITLAB admitted the defectiveness of the replaced or repaired goods.

## 8. Software Use

- 8.1 If software is included in the scope of a delivery, the customer shall be granted a non-exclusive right to use the software and its associated documentation. It is provided for use on the designated delivery item. The use of the software on more than one system shall be prohibited.
- 8.2 The customer shall only be entitled to copy, transfer or translate the software or to convert it from object code to source code to the extent permitted by law (Sections 69a et seq. Urheberrechtsgesetz – German Copyright Act). The customer undertakes to refrain from removing manufacturer information, in particular copyright notices, or from changing these without VITLAB'S prior express consent or the prior express consent of the software supplier.
- 8.3 All other rights to the software and the documentation including copies thereof shall remain with VITLAB and/or the software supplier. The issue of sublicenses is not permitted.

## 9. Spare Parts, Maintenance/Repair and Calibration

- 9.1 For spare parts and maintenance, repair and calibration services, the current repair service and spare parts price list shall apply.
- 9.2 Insofar as there is an obligation on the part of VITLAB to maintain/supply spare parts, then this obligation shall be limited to a period of five (5) years from the date of delivery. If spare parts are not manufactured by VITLAB, or are no longer available on the market, for example electronic components, or if the raw material for their production is no longer available, the obligation of VITLAB to deliver spare parts shall lapse.
- 9.3 For calibration and maintenance, expendable items from VITLAB production are normally used.
- 9.4 Maintenance and calibration services can only be provided if the customer has declared the devices sent to be safe to work on from a health hazard perspective.
- 9.5 For repair/service values of up to € 50, VITLAB reserves the right not to provide a separate cost estimate.

## 10. Legal Reservation, Industrial Property Rights, Confidentiality

- 10.1 VITLAB reserves ownership and all industrial property rights and copyrights to all moulds, tools or other devices, samples, pictures, and business and technical documents produced or provided by VITLAB. This also applies where the customer has wholly or in part taken on the costs hereof. The customer may use these only in the manner agreed with VITLAB. Without VITLAB'S written consent, the customer may not himself manufacture contractual objects delivered or have the same manufactured by third parties.
- 10.2 Insofar as VITLAB delivers goods according to the designs or other requirements specified by the customer (models, patterns etc.), the customer shall be liable to VITLAB by default for ensuring that, through the manufacture and delivery of these goods, the industrial property rights or other rights of third parties are not infringed. If the customer is at fault he shall reimburse VITLAB all damage resulting from any such infringement of rights.
- 10.3 Any information acquired from this business relationship and not deemed to be public knowledge must not be disclosed by the customer to third parties.