

General Terms and Conditions of Purchase and Delivery

of VIVATIS Holding AG and affiliated Group companies

1. **General, scope**
 - 1.1. The following conditions of purchase and delivery apply to all contracts, deliveries and other services provided nothing to the contrary is expressly specified. Amendments to and supplementary information regarding, as well as the supplier's conditions that are contrary to the following conditions of purchase and delivery shall only be deemed accepted if confirmed in writing by VIVATIS as an addendum to these conditions. Accepting deliveries or services or paying or these does not constitute any approval whatsoever of the supplier's conditions of sale.
 - 1.2. The supplier's terms and conditions of business to the contrary, irrespective of whichever kind, in particular a provision stated in an offer or in an order confirmation of the supplier, shall only be deemed accepted if VIVATIS has expressly and explicitly acknowledged these in writing.
 - 1.3. These conditions of purchase and delivery shall apply until they are amended to all additional orders, including if separate reference is no longer made to them.
 - 1.4. Secrecy on the part of VIVATIS is expressly stated not to have any statement value, and in particular shall not lead to acknowledgement of the supplier's general terms and conditions of business.
 - 1.5. The supplier is aware that employees or third parties deployed by VIVATIS are not entitled to make any kind of assurances (in particular subsidiary agreements, reservations, amendments or supplementary information) on behalf of VIVATIS. These are subject to written approval by VIVATIS in order to be deemed valid.
 - 1.6. VIVATIS is entitled to correct obvious errors (writing and calculation errors, typographical errors) in written documents at any time.
2. **Tenders, samples**
 - 2.1. Tenders submitted by the supplier are free of charge for VIVATIS and do not justify any kind of obligation, including of the offer is made following an enquiry or request by VIVATIS.
 - 2.2. Upon submitting a tender, the supplier is to comply strictly with the enquiry made by VIVATIS, and expressly refer to potential variations. Tender documents shall not be returned. Samples are, in any case, to be made available to VIVATIS free of charge.
3. **Orders**
 - 3.1. Orders, contracts and amendments to or supplementary information regarding these are subject to the written form. Forwarding by facsimile and by e-mail is permitted. Orders placed orally or by telephone or amendments to or supplementary information regarding orders are subject to express, written confirmation by VIVATIS in order to be deemed valid.
 - 3.2. All documents forwarded in conjunction with submitting a tender or an order or an enquiry (e.g. plans, samples or formulas etc.) shall remain the property of VIVATIS and may neither be duplicated nor made available to third parties without prior, written approval by VIVATIS. A request may be made for them to be returned at any time, and they are to be forwarded to VIVATIS without undue delay if the order is placed elsewhere or after the order has been executed.
 - 3.3. The corresponding order numbers and the respective ordering department of VIVATIS are to be stated in all the supplier's written correspondence. Deliveries, notices, and invoices etc. that do not contain such details shall not be deemed to have been received.
4. **Prices**
 - 4.1. The agreed prices are fixed prices that do not include VAT but include all the supplier's expenses in conjunction with performing the delivery and rendering the service. This includes, in particular, all costs incurred by the supplier associated with deliveries and services for transport, insurance, packaging, taxes, customs duties and levies. Only such costs that are expressly stated in the order as an obligation on the part of VIVATIS shall be borne by VIVATIS. The conditions of the primary order apply to potential order extensions and supplements as well as orders for spare parts.
5. **Invoice, payment terms and conditions**
 - 5.1. Invoices are to be dispatched following receipt of the goods by way of stating the VIVATIS order number and the order date. Invoice copies and partial invoices are to be expressly stated as such. The statutory turnover tax is to be stated separately in the invoices. In the case of intra-state deliveries within the EU, it is absolutely necessary that the turnover tax identification number of both contracting countries is stated. All invoices must comply in full with the statutory provisions of the Turnover Tax Act (in particular Section 11 USiG). VIVATIS reserves the right to solely process invoices that meet the above criteria.
 - 5.2. In the absence of terms and conditions of payment to the contrary are agreed upon, invoice amounts are to be settled at the discretion of VIVATIS either within
 - 30 days by way of deducting a 3% trade discount or
 - 45 days by way of deducting a 2% trade discount or
 - 60 days without deductions.
 - 5.3. The period shall start to commence from receipt of the invoice and goods by VIVATIS.
 - 5.4. Invoices that contain factual or arithmetical errors or faults shall not justify any due date up until the correction accepted by VIVATIS, and may be returned by VIVATIS in the case of errors within the payment period. In such a case, the payment period shall only commence upon receipt of the corrected invoice. In the event of faulty performance, VIVATIS shall be entitled to retain payment in full up until the performance has been properly honoured. This applies without discounts, reductions or payment privileges.
 - 5.5. Payment may be made at the discretion of VIVATIS by cheque or bank transfer. The payment to an Austrian bank with a simultaneous transfer order to the supplier shall be deemed payment to the supplier.
 - 5.6. All bank charges shall be borne by the supplier.
 - 5.7. VIVATIS is entitled to set off its liabilities or the supplier's receivables against receivables due from the supplier. This also applies if the VIVATIS receivable due from the supplier has not yet been called due for payment.
 - 5.8. The supplier is not entitled to set off its liabilities due to VIVATIS against receivables due from VIVATIS.
 - 5.9. The assignment and retention of receivables arising from the deliveries and services for VIVATIS are not permitted without written approval by VIVATIS.
 - 5.10. Payment on the part of VIVATIS does not lead to acknowledgement of the adequacy of delivery, and therefore does not exert any influence on claims to which VIVATIS may be entitled against the supplier resulting from executing the contract (for example rights resulting from a warranty, guarantee and compensatory damages).
6. **Delivery, shipping, packaging**
 - 6.1. In terms of design, content (delivery date or delivery period and specified delivery location, scope and division in partial deliveries), the delivery is to comply with the order or requirements of VIVATIS. Variations from this are only permitted following prior, written approval by VIVATIS.
 - 6.2. A delivery note completed in full containing the precise details of the order data is to be enclosed with all deliveries.
 - 6.3. In the event that partial, residual or sample deliveries are permitted, these are to be marked as such.
 - 6.4. The supplier is only entitled to provide the delivery on an earlier date or provide partial deliveries following prior, written approval.
 - 6.5. The delivered goods shall only be assumed by VIVATIS if they are packed in a manner that is customary in the market and is appropriate, and they have been dispatched in accordance with the VIVATIS shipping requirements.
 - 6.6. In the absence of written agreements to the contrary, goods are to be delivered on standardised Euro returnable pallets; pallets shall be returned or exchanged at the cost and risk of the supplier. The supplier undertakes to properly pay the licensing fees that arise in that respect. In the event of disposal of the transport packaging by VIVATIS or its customer or purchasing client, the supplier undertakes to provide separate remuneration for the disposal costs. The supplier is free to take part in another, suitable disposal model. In such a case the remuneration shall be inapplicable.
 - 6.7. The findings of VIVATIS are authoritative with regard to determining weights and the quantity of delivered goods.
 - 6.8. The supplier undertakes to present on an appropriate date and properly the movement certificates, where applicable properly issued certificates of origin, other goods certificates and documents, which correspond with the Austrian laws and ordinances (in particular the EU Ordinances and EU Directives). The supplier is to indemnify and hold VIVATIS harmless regarding the damage arising from the failure to honour the shipping requirements and/or the inappropriate presentation of the above-mentioned certificates and documents.
 - 6.9. The supplier undertakes to comply with the specific requirements and regulations (ÖNORMEN, DIN, etc.) that apply to the respective order.
 - 6.10. The supplier is to deliver in such good time goods that have a best before date or a use-by date so that at least the residual time that is customary in the trade or has been expressly agreed upon applies on the agreed place of destination.
 - 6.11. Cash on delivery consignments shall not be accepted.
7. **Delivery time**
 - 7.1. Agreed dates and periods have binding force.
 - 7.2. The delivery period shall commence upon the date stated to VIVATIS in the order.
 - 7.3. As soon as the supplier realises that it cannot meet the agreed delivery periods or delivery dates, it is to inform VIVATIS of this in writing without delay by way of stating the reasons and the likely duration of the delay. The supplier is to adopt all measures at its own cost to keep delays at a minimum, and inform VIVATIS of this in writing. This does not affect the right of VIVATIS to withdraw from the contract in full or in part.
 - 7.4. In the case of default on the part of the supplier, it shall be incumbent upon VIVATIS at its own discretion to request execution of the contract and compensation for the damage caused by delay or to withdraw from the contract without setting a reasonable period and claim compensatory damages regarding non-performance. VIVATIS is furthermore entitled to purchase goods in replacement at the supplier's cost.
8. **Penalties**
 - 8.1. If the supplier fails to honour its obligations, it undertakes to pay to VIVATIS a penalty, which shall not be subject to judicial reduction, of double the order value for each violation. This does not affect claims lodged by VIVATIS for damages.
9. **Bearing risk, passing of ownership**
 - 9.1. The provisions of Incoterms 2010 are authoritative with regard to bearing risk
 - 9.2. Ownership of and the risk of the delivered goods shall pass to VIVATIS on a step-by-step basis upon the actual proper delivery provided it was accepted by VIVATIS. Reservation of title of any kind (e.g. extended reservation of ownership with advance assignment as well as current account or Group reservation), retention rights and ownership by way of security shall not be acknowledged by VIVATIS without exception.
10. **Means of production and documents**
 - 10.1. Means of production or documents that VIVATIS makes available to the supplier shall remain the exclusive property of VIVATIS, and VIVATIS may freely dispose of these.
 - 10.2. The supplier is to use the means of production and documents owned by VIVATIS exclusively for executing the orders of VIVATIS, and store, service and maintain them at its own cost with due care, in the case of wear-and-tear replace them and insure them against cover for any kind of damage.
 - 10.3. The means of production and documents owned by VIVATIS are to be treated in strict confidence, and may neither be made available to persons outside the VIVATIS company or third parties nor be surrendered or used for a purpose other than the agreed purpose without written consent by VIVATIS. As soon as the items are no longer required to execute the order, these are to be returned to VIVATIS after processing the respective delivery at the supplier's cost and risk.
 - 10.4. These regulations also apply to means of production of documents that were made available to the supplier to draw up offers. In that case these are to be returned in full when the tender is submitted.
11. **Guarantee**
 - 11.1. The supplier guarantees that the performance of the delivery or rendering of the service as per agreement contain the expressly specified and otherwise warranted or generally presumable characteristics and comply with the relevant provisions and standards, in particular with regard to the requirements that apply in the European Union. Furthermore, the supplier guarantees that its delivery or service is suitable for the specific contingency as well as the fact that they correspond to the details set out in the instructions for use and pamphlets etc.
 - 11.2. The guarantee period is 12 months provided a longer guarantee period is not stipulated by law, and commences upon the actual take-over of the goods with legal force.
 - 11.3. The supplier's guarantee period applies to all goods its supplies, including if these or parts thereof were not manufactured by the supplier. Following rectification of defects and following each attempt at rectification by the supplier, the stated period shall start afresh. The guarantee period shall be interrupted by any written notification of defects.
 - 11.4. If goods are faulty, VIVATIS may – including in the event of minor defects – at its own discretion immediately request replacement, subsequent improvement or a reduction in price as well as any compensatory damages in the place of improvement. VIVATIS may withdraw from the contract if the supplier fails to honour the request by VIVATIS for replacement, subsequent improvement, a reduction in price or compensatory damages, or not properly within the period VIVATIS has set the supplier.
 - 11.5. The supplier waives objecting to delayed notification of defects. The obligation to provide notification of defects in accordance with Sections 377 I UGB is hereby expressly contracted out. Notification of defects may be provided at any time up until the end of the guarantee period.
 - 11.7. In urgent cases, in the case of imminent danger, rejection of improvement and/or subsequent delivery, VIVATIS shall be entitled to make arrangements to have the defects rectified at the supplier's cost – irrespective of the supplier's further-reaching liability.
 - 11.8. If a defect is attributable to a situation that is the supplier's responsibility or if the supplied goods lack a warranted characteristic, the supplier shall also be liable for consequential damage resulting from the use of its goods or its work. The supplier shall render VIVATIS comprehensively exempt from resulting third party claims.
 - 11.9. Defects are to be rectified without undue delay following a request by VIVATIS. Where necessary, defects are to be rectified – by way of adhering to industrial provisions – in multi-shift operations by way of overtime work or work performed on Sundays and public holiday.
 - 11.10. If the supplier was unable to rectify a defect irrespective of two attempts, VIVATIS shall be entitled to make arrangements to have the defect rectified by a third party at the supplier's cost.
 - 11.11. If defects occur again during the warranty period irrespective of a replacement that affect the same or different parts of the delivered goods, the supplier undertakes to rectify the causes of the defects by way of suitable measures such as amending the manufacturing procedure or goods composition etc.
 - 11.12. In the case of delivering foods, additives and other substances for food production and in the case of packaging materials that come into contact with foods in the case of processing or packaging, the supplier guarantees that they comply with the Austrian laws that are valid at the time of the goods hand-over, and European requirements, in particular the requirements that apply to the law relating to food and drugs and other associated ordinances. Furthermore, the supplier guarantees that the delivered goods are neither gene-manipulated organisms nor contain these and have not been made from gene-manipulated organisms.
 - 11.13. The supplier guarantees that the delivered goods are unobjectionable in terms of the microbiological content, and that they do not contain any banned or physiologically objectionable substances and/or any substances subject to declaration that have not been declared.
 - 11.14. The supplier guarantees that the delivery corresponds to the description.
 - 11.15. The supplier guarantees that the delivered goods do not contain any concomitant substances or additives other than those that are intentionally unavoidable.
 - 11.16. At the request of VIVATIS, the supplier is to make available corresponding certificates and proof.
12. **Product liability**
 - 12.1. If legal action is brought against VIVATIS, based on product liability, by a customer or other third party, the supplier undertakes to indemnify and hold VIVATIS harmless insofar as the damage is attributable to the faulty nature of the goods in the area for which the supplier or its sub-contractors are responsible. The supplier undertakes to make available to VIVATIS all details that are expedient with regard to delivering fault-free goods (warnings and licensing requirements etc.). Should the supplier subsequently become aware of circumstances that could justify a product fault within the meaning of the Product Liability Act, the supplier undertakes to notify VIVATIS of this without undue delay. Restrictions of any kind regarding the obligations that apply to the supplier on the basis of the Product Liability Act and any kind of restrictions in the claims for damages to which the supplier is entitled in accordance with this law or other provisions are excluded.
 - 12.2. VIVATIS shall be entitled to return the goods prior to purchasing or using such goods as a result of detrimental effects on health or for safety reasons because public warnings have been issued based on a complaint lodged by the authorities. The right to return applies during a period of one month following a public warning, and the supplier undertakes to indemnify and hold VIVATIS harmless with regard to all appertaining expenses.
13. **Proprietary rights, liability**
 - 13.1. The supplier is to indemnify and hold VIVATIS harmless with regard to any disputes that arise as a result of the supplied goods or their use, in particular regarding patents, trademarks, samples, copyrights or other third party proprietary rights in Austria and abroad.
 - 13.2. The supplier shall be liable as a basis for the statutory provisions without limitation both for its own culpability and by way of taking Sections 1313a and 1315 ABGB as the basis for the culpability of its vicarious agents.
 - 13.3. VIVATIS shall only be liable to the supplier in the event of intentional acts provided mandatory legal requirements do not specify further-reaching liability.
 - 13.4. The supplier shall indemnify and hold VIVATIS harmless with regard to all third party claims that are attributable to the faulty nature of its goods. In the case of claims asserted by third parties, the supplier undertakes to make available to VIVATIS all information required to ward off such claims, and at the request of VIVATIS to enter into a court case on the side of VIVATIS as an intervening party.
14. **Job results**
 - 14.1. VIVATIS is entitled to wholly or partially publish the supplier's job results if these have been created exclusively for VIVATIS. The publication of such job results and the use of such job results in favour of third parties by the supplier shall only be permitted following prior approval by VIVATIS.
15. **Force majeure**
 - 15.1. Performance disruptions as a result of force majeure, industrial action, operational disruptions that are not the responsibility of a party, unrest and other unavoidable events shall neither entitle VIVATIS nor the supplier to assert any kind of claims.
 - 15.2. If events of force majeure lead to a restriction or discontinuation of production by VIVATIS or if these hamper the outgoing transportation of the goods or the products manufactured by VIVATIS en route to the customers, VIVATIS shall be released from the obligation to accept and pay for the duration and scope of the effects of such disruptions. Where necessary, in such cases the supplier shall properly store the goods, at its own cost and risk, up until these are taken over by VIVATIS or its customer.
 - 15.3. Dates and periods that cannot be honoured as a result of the occurrence of the force majeure shall be extended by the duration of the effects of the force majeure.
 - 15.4. In cases involving force majeure, the supplier is to make every effort to eliminate or reduce the difficulties and foreseeable damage, and inform VIVATIS in that respect on an ongoing basis.
 - 15.5. In the event that a case of force majeure lasts longer than 4 weeks, VIVATIS may withdraw from the contract in full or in part.
16. **Assignment, pledging**
 - 16.1. Assigning or transferring rights of the supplier to third parties is excluded (in particular under reference to Item 5.8) unless VIVATIS agreed to this in writing.
17. **Secrecy**
 - 17.1. The order and appertaining details and documents etc. are to be treated in strict confidence as business secrets of VIVATIS.
 - 17.2. The order may not be used for advertising purposes.
 - 17.3. A no-fault liability conventional penalty of € 50,000 is agreed upon, which is not subject to judicial reduction, in the event of violation of the applicable obligation to maintain secrecy.
18. **Partial nullity**
 - 18.1. In the event that a provision of these general terms and conditions of purchase or the other contractual agreements is or becomes invalid or impracticable, this shall not affect the validity of the other provisions. The parties undertake to replace an invalid or impracticable provision with a valid or practicable provision that comes closest to the economic outcome of the invalid or impracticable provision.
19. **Benefits for employees**
 - 19.1. The supplier is prohibited from offering, promising or granting any kind of benefits to the employees of VIVATIS. VIVATIS therefore reserves the right to lodge claims for damages and the right to terminate the business relationship without notice.
20. **Written form**
 - 20.1. Amendments to and supplementary information regarding these general terms and conditions of purchase and delivery and the other contractual agreements are subject to the written form in order to be deemed valid. The same applies to variations from the written form requirement.
21. **Place of performance, place of jurisdiction**
 - 21.1. The location at which the goods are to be supplied as per order or the service is to be rendered as per order is deemed the place of performance.
 - 21.2. Linz is deemed the place of jurisdiction for all mutual claims. VIVATIS reserves the right to notify the supplier of another statutory place of jurisdiction.
22. **Applicable law**
 - 22.1. Solely Austrian substantive law applies to the legal relations between VIVATIS and the supplier by way of exclusion of the reference standards. Application of the Austrian Sale Law is expressly excluded, including if the supplier has its registered office outside the territory of the Federal Republic of Austria.
23. **Up-to-date content**
 - 23.1. These general terms and conditions of purchase and delivery can be viewed as stated in the respective, valid version at www.vivatis.at