

**General Terms and Conditions of Delivery (GTC-D)**

**§1. Scope**

(1) All products and services of any kind delivered by PVA TePla AG and its subsidiaries PVA Industrial Vacuum Systems GmbH, PVA Metrology & Plasma Solutions GmbH, PVA Crystal Growing Systems GmbH, PVA TePla Analytical Systems GmbH, PVA Löt- und Werkstofftechnik GmbH, PVA Control GmbH, PVA SPA Software Entwicklungs GmbH, PVA Vakuum Anlagenbau Jena GmbH (hereinafter referred to as "Supplier") and the contracting party are governed exclusively by the following Terms and Conditions of Delivery.

(2) The Supplier's deliveries, services and offers are governed exclusively by the following conditions if the purchaser is an entrepreneur (section 14 of the *Bürgerliches Gesetzbuch* (BGB – German Civil Code), a legal entity under public law or a fund under public law. These also apply to future business relationships even if they are not subject to a separate, specific agreement. General terms and conditions of the purchaser that differ, contradict or supplement them will be a part of the contract only if the Supplier has explicitly consented to them being applicable. This requirement for consent applies in every case, including, for example, if the Supplier supplies the purchaser without objection knowing about any general terms and conditions of the purchaser.

(3) Separate agreements made with the purchaser on a case-by-case basis (including subsidiary agreements, addenda and amendments) always take precedence over the Supplier's general terms of delivery. Subject to any proof to the contrary, a written contract or our written confirmation prevail over the contents of agreements of this kind.

(4) References to the validity of statutory provisions are for clarification purposes only. The statutory provisions thus also apply without any clarification if they are not directly amended or expressly excluded in these General Terms of Delivery.

**§2. Offer and Conclusion of Contract**

(1) The Supplier's offers are non-binding and without obligation unless the binding nature is stated explicitly in the offer. This also applies if the Supplier provided the purchaser with product descriptions or other documents in advance. The contract is concluded only once the Supplier confirms the order in writing or the goods are delivered.

(2) Drawings, images, dimensions, weights, and other performance data are binding only if this has been expressly agreed upon in writing.

(3) The Supplier retain the right of property and copyright to offer documents, images, drawings, calculations and other documents; they may not be made available to third parties without the prior written consent of the Supplier.

(4) Documents designated as "confidential" must not be disclosed. This applies in particular, but not limited to, Supplier offers. The buyer requires the express written permission of the Supplier before making any such documents available to third parties. All documents listed under 2.3 and 2.4 must be returned immediately if no order is placed.

**§3. Prices, Payment Conditions, Offsetting, Retention**

(1) Prices are "ex works" from the Supplier, excluding packaging, unless otherwise agreed upon.

(2) Unless otherwise specified, the Supplier is bound to the prices contained in its offers designated as binding for four weeks commencing on the offer date.

(3) The Supplier's prices do not include statutory VAT; this is stated separately in the invoice at the applicable rate on the invoicing date.

(4) Unless otherwise agreed upon, the Supplier's invoices are payable within 14 days of the invoicing date without deductions and free of postage and charges for the Supplier. However, the Supplier is also entitled at any time to make a delivery in full or in part only against advance payment, including as part of a current business relationship. The Supplier makes a corresponding reservation no later than at the time of the order confirmation. Decisive is the date on which the Supplier receives payment. Despite any contrary provisions of the purchaser, the Supplier is entitled to initially offset payments against the purchaser's older debts; it will inform the purchaser about the type of offsetting that has occurred. If costs and interests have already accrued, the Supplier is entitled to credit the payment first against the costs, then against the interest, and finally against the primary debt.

(5) Partial deliveries entitle the Supplier to invoice the corresponding portion.

(6) Installment payments and the deduction of discounts require a special written agreement.

(7) The purchaser is in arrears if the payment period above (3.4) lapses. If the purchaser defaults, the Supplier is entitled, starting on the date in question, to charge annual interest at 9 percentage points above the current base rate (Section 247 BGB). This does not affect the Supplier's right to assert any further compensation against the purchaser. The Supplier's entitlement to commercial interest on maturity (section 353 *Handelsgesetzbuch* (German Civil Code - HGB) against merchants also remains unaffected.

(8) If the Supplier becomes aware of circumstances that cause it to question the purchaser's creditworthiness, in particular if a check and/or bill of exchange is not cleared or payment discontinues or insolvency proceedings have been filed, the Supplier is entitled to declare that the remaining debt be due for payment even if the Supplier has already accepted checks. In this case, the Supplier is also entitled to demand advance payments or surety.

(9) The purchaser is entitled to offset payments only if its counterclaims are asserted legally, indisputably, or have been acknowledged by the Supplier. The purchaser is furthermore entitled to assert its right to retain payments only to the extent that its counterclaim is based on the same contractual relationship and is asserted legally, indisputably, or has been acknowledged by the Supplier. The assignment of claims against the Supplier or other rights is excluded, this does not affect section 354a German Civil Code.

**§4. Delivery Time, Partial Deliveries, Default of Acceptance**

(1) Delivery dates or periods require the written confirmation of the Supplier if they are intended to be binding. In all other cases, delivery dates or periods are not binding. The delivery period specified by the Supplier commences only once all technical, commercial, and official conditions have been fulfilled.

(2) Compliance with the delivery period is subject to timely and correct deliveries from own suppliers. If delays are expected, the Supplier must inform the purchaser as soon as possible.

(3) The Supplier is entitled to make partial deliveries and partial performance of services if:

- the partial delivery can be used by the customer as part of the contractually agreed intended use
- the delivery of the remaining goods that were ordered is ensured
- this does not entail any significant additional effort or costs for the purchaser (unless the Supplier agrees to assume these costs).

The return of packaging requires a separate agreement.

(4) Fulfillment of the Supplier's delivery and performance obligations is subject to the timely and correct fulfillment of the purchaser's obligations.

(5) The delivery time is considered as having been met if, by the time of its expiry, the delivery item has been handed over to the first carrier or the buyer has been informed that the item is ready to ship.

(6) If the delivery is postponed due to force majeure, labor disputes, or other events beyond the Supplier's control, the delivery period is extended appropriately but for no longer than six months.

(7) If the purchaser is in default of acceptance or infringes other obligations to cooperate, the Supplier is entitled to demand compensation for any damage incurred by the Supplier, including for any additional expenses. In such a case, the risk of accidental loss or deterioration of the goods is also transferred to the purchaser at the moment in which the purchaser becomes in default of acceptance.

(8) Notice of default via a warning cannot be issued until at least four weeks after the Supplier's performance obligation was due. If the buyer incurs damage as a result of a delay for which the Supplier is responsible, the buyer is entitled to demand compensation for delay. This is to the amount of 0.5% of the net price (delivery value) for every full week of delay, although not exceeding in total 5% of the value of the part of the delivery that cannot be delivered on time due to the delay or cannot be used in accordance with the contract. There is no right to further compensation due to delayed delivery.

**§5. Assembly, Commissioning, Service**

If assembly, commissioning, or servicing is to be performed, the relevant conditions—which the Supplier can provide upon request—also apply.

**§6. Transfer of Risk**

The risk is transferred to the purchaser as soon as the shipment has been handed over to the person commissioned to transport the shipment or has left the Supplier's warehouse for subsequent transportation (delivery date). If the shipment is delayed or becomes impossible for reasons beyond the Supplier's control, the risk is transferred to the buyer when the buyer is informed that the item is ready to ship. At the very latest, it is transferred when the item is handed over to the purchaser.

**§7. Claims for Defects**

(1) Unless agreed otherwise in the following, statutory regulations apply for the purchaser's rights in the event of defects in quality and title (including incorrect delivery, under delivery, incorrect installation or faulty installation instructions). This does not in any cases affect special statutory provisions for the final delivery of unprocessed goods to a consumer, even if the consumer has reprocessed these (Supplier's right of recourse in accordance with sections 478 et seqq. BGB). Claims arising from the Supplier's right of

recourse are excluded if the defective goods have been reprocessed by the purchaser or by another contractor, e.g. by installing them in another product.

(2) The Supplier's liability for defects is based, in particular, on the agreement reached regarding the condition of the goods. If no agreement was reached regarding the condition, statutory regulations are applied to assess whether a defect is present (section 434 (1) sentence 2 and 3 BGB). However, the Supplier is not liable for public statements made by the manufacturer or other third parties (e.g. advertising claims).

(3) The purchaser is entitled to claims for defects on the condition that it has observed its statutory requirements to inspect and give notification of defects (sections 377, 381 HGB). If a defect is discovered upon delivery, inspection or at any other time in the future, the Supplier must be notified of this immediately in writing. If the purchaser fails to properly inspect and/or report defects, the Supplier is not liable for the defects that were not reported and not reported on time or properly.

As a condition of rectifying the defect as owed, the Supplier is entitled to require that the purchaser pays the purchase price. However, the purchaser is entitled to withhold payment of the purchase price in an amount that is reasonable in relation to the defect.

(4) If the item delivered is defective, the Supplier can initially choose whether to rectify the defect (repair) or deliver an item free of defects (replacement delivery). This does not affect the Supplier's right to refuse rectification in accordance with statutory provisions.

(5) Claims lodged by the purchaser for expenses – in particular, transport, road, working, and material costs – associated with the rectification of defects are excluded insofar as the expenses increase because the purchased service was performed at a place other than the originally specified place of performance, unless such relocation is consistent with the product's intended use.

(6) The purchaser must give the Supplier the necessary time and opportunity to perform the rectification owed, in particular to hand over the faulty goods for inspection. In the case of replacement delivery, the purchaser must return the faulty items to the Supplier in accordance with statutory provisions. Rectifying the defect does not include disassembling the defective items or reassembling them if the Supplier was not originally obliged to do so.

(7) If the second attempt at rectification after a reasonable period fails and/or a replacement delivery is not (reasonably) possible, the purchaser is entitled, under statutory requirements, to either demand a reduction in payment or revoke the contract. Compensation may be asserted only under the conditions specified in item 9.

(8) In the case of natural wear and tear, any and all claims for defects are excluded. There is no right of withdrawal for insignificant defects.

(9) The following also applies in relation to software: The Supplier guarantees that the software handed over to the purchaser matches the Supplier's program specifications insofar as the software is installed in accordance with the Supplier's guidelines on the device systems it envisaged. Claims for defects shall arise only for software flaws that can be reproduced at any time. The Supplier undertakes to troubleshoot all significant flaws that hinder usage as per the contract, but reserves the right to perform troubleshooting according to the significance of the flaw either by installing an improved software version or providing instructions explaining how to rectify the flaw or bypass the effects of the flaw. The Supplier cannot guarantee that the software will operate without problems in all combinations chosen by the purchaser but not specified by the Supplier.

(10) If the Supplier's operating and maintenance instructions are not followed, changes are made to the deliveries/services, parts are replaced or consumables are used that do not meet the original specifications, unsuitable chemical, electrochemical, or electrical influences are present, or the component is used in an unsuitable or improper manner or installed/commissioned incorrectly by the buyer or a third party, any and all claims for defects cease to apply.

(11) Claims for defects lapse or expire within a year of delivery.

## **§8. Commercial Property Rights and Copyright**

(1) If claims are made against the purchaser for the breach of commercial property rights or copyright on the basis of the use of the purchased item within one year of delivery of the purchased item, the Supplier undertakes to procure for the purchaser the right of continued use of the purchased item. This is granted only on condition that the purchaser informs the Supplier immediately and in writing of such third-party claims and that the Supplier reserves the right to initiate any necessary countermeasures and out-of-court proceedings. If continued use of the purchased item under economically viable circumstances is not possible under these conditions, it is deemed agreed that the Supplier may at its discretion modify or replace the purchase item in order to rectify the defect or take back the purchased item and refund the sales price paid to the Supplier less a deduction to account for the age of the purchased item.

(2) Claims against the Supplier are excluded in the event of legal violations arising because the purchased item was not used in the manner specified in the contract. The provisions under item 9 otherwise apply.

(3) The Supplier is not liable for legal violations caused by the purchased item provided that this was manufactured on the basis of design documents or other specifications of the purchaser; rather, the purchaser will indemnify the Supplier against any claims.

## **§9. Liability Limitation**

(1) In all cases of contractual and non-contractual liability, the Supplier pays compensation or reimburses wasted expenditure only to the extent described below:

a) The Supplier is liable in full in the case of intent or gross negligence, for bodily injury and for claims under product liability law.

b) If a material contractual obligation is breached that is essential to the nature of the agreement, the fulfillment of which is a prerequisite for enabling the proper performance of the agreement or the breach of which jeopardizes the purpose of the agreement (cardinal obligation), the Supplier is liable only for the damage which the provision that was breached intended to prevent in the amount set out when concluding the agreement; if there are ordinary vicarious agents, this damage is limited to EUR 100,000 per claim, total not exceeding EUR 500,000 or, if the limitation of liability is not reasonably proportionate to the risk typical of the agreement, it is limited to the reasonably expected damage typical of the agreement.

Insofar as the Supplier accepts liability for data loss, liability in accordance with "b)" is limited to the data recovery outlay that would typically have been required if the buyer had made regular data backups corresponding to the risk.

(2) The defense of contributory negligence remains open.

(3) All claims against the Supplier for compensation or reimbursement of wasted expenditure in the case of contractual and non-contractual liability are subject to a limitation period of one year. The limitation period commences no later than five years after the claim arises. The provisions of sentences 1 to 3 in this paragraph do not apply for liability associated with intent, gross negligence, bodily injury, under product liability law or if the requirements specified under 9.1 b) are breached. The provisions in this paragraph do not affect different limitation period for claims based on defects in quality and title.

## **§10. Reservation of Title**

(1) Until settlement of all claims (including all balance demands from the current account) to which the Supplier is or will be entitled against the purchaser arising from whatever legal grounds, the Supplier is granted the following securities that will be released at its discretion in full or in part and upon demand, provided that their realizable value is permanently more than 10%.

(2) The purchased item remains the property of the Supplier (reserved goods). Processing or modification is always performed for the Supplier as manufacturer, but with no obligation for the Supplier. The Supplier is entitled to co-ownership of the new item as a proportion of the value of the reserved item (invoice value) to the new item. In this case, the purchaser is required to keep the item in safe keeping for the Supplier free of charge. If the purchaser resells the new product, item 10.3 applies accordingly.

(3) The purchaser is entitled to process and sell the reserved item in the orderly course of business, provided that the purchaser is not in arrears. Pledges and security assignments are not permitted. The purchaser is obligated to insure the reserved item against the usual risks. By way of security, the purchaser will immediately assign to the Supplier the full extent of all claims arising from the resale or some other legal grounds (insurance, unlawful act) in relation to the reserved item (including all balance demands from the current account). The Supplier hereby accepts this assignment. Subject to revocation, the Supplier authorizes the purchaser to collect the claims assigned to the Supplier for its invoice in its own name. This collection authority may be revoked only if the purchaser fails to properly fulfill its payment obligations.

(4) If the reserved items are accessed by third parties, in particular as part of seizures and (preliminary) insolvency proceedings, the purchaser will inform the third party of the Supplier's ownership rights and inform the Supplier of the situation immediately so that it can assert its rights of ownership. If the third party is not in a position to reimburse the Supplier for the judicial or extra-judicial costs arising in this connection, the purchaser is held liable.

(5) If the validity of the reservation of title in the purchaser's country is linked to special formal requirements or other preconditions, the purchaser must ensure that such requirements are fulfilled.

## **§11. Rights to Software**

(1) The purchaser is granted an unlimited, non-exclusive and non-transferable right of use for the software, its modifications, supplements, extensions and accompanying documentation exclusively for internal use of the software.

(2) The purchaser is not entitled to any software and documentation rights beyond those specified in item 11.1 above; the Supplier remains sole holder of the copyrights. The purchaser is not permitted without the prior written permission of the Supplier to make software, documentation, or any subsequent modifications, supplements, or extensions available to third parties, nor to change, copy, or otherwise duplicate software, documentation, or any subsequent modifications, supplements, or extensions, unless such duplication is necessary for preparing a backup copy, which shall be marked as such.

(3) The re-translation of the supplied program code to other code formats (decompiling) is permitted under the requirements stated in Section 69 e of the German Copyright Act

(4) for the purposes of ensuring compatibility between an independently developed software program and the contractually supplied software. The interface information required for ensuring compatibility can be requested from the Supplier for a small fee.

(5) Simultaneous storage or use of the software on more than one piece of hardware is not allowed. If the purchaser wishes to use the software on multiple hardware configurations simultaneously (e.g. for use by several employees), the purchaser must purchase an appropriate number of program packages.

(6) The purchaser is obligated to take the necessary precautions to prevent unauthorized third-party access to the software and documentation. The original data carriers supplied and the backup copy shall be stored at a place secured against unauthorized third-party access. The purchaser indemnifies the Supplier against damage that arises through failure to observe this requirement. The purchaser's employees must be explicitly made aware of their obligation to comply with these contractual conditions and the copyright provisions.

## §12. Export Regulations

(1) All deliveries and services are provided in compliance with the applicable national, European and international export control laws.

(2) The deliveries and services shall be subject to the condition precedent that the performance of a contract is not being restricted by any regulations, particularly export control regulations, financial sanctions or embargoes imposed by the European Union, the Federal Republic of Germany and/or the United States of America. The contract partners undertake to provide all information and documents required for the export, domestic shipment and/or import. Delays caused by export controls or licensing procedures shall invalidate lead times or deadlines stipulated. If necessary export licenses cannot be obtained for certain goods, the contract shall be deemed as not concluded with regard to the goods concerned. Any claims for damages on account of this and the aforementioned failure to meet deadlines shall be excluded. This shall also apply in the event that economic, trade or financial sanctions or embargoes of the European Union, the Federal Republic of Germany and/or the United States of America are imposed directly against the End User during the term of the contract. It is expressly agreed that the deliveries and services will be used exclusively in the contractually specified destination country and will not be exported to other countries affected by EU or US embargo measures or re-exported for use in such countries.

(3) Buyer and recipient of the contractual goods undertake not to sell, export, deliver, broker or otherwise pass on these goods and their derivatives to a country of destination, if this would violate the provisions of an embargo of the European Union. This applies in particular to the Russia Embargo Regulation (EU) 833/2014 in its current version, which prohibits the direct or indirect sale, transfer or export of goods listed in the embargo control lists (e.g. Annexes VII, XI, XVIII, XX, XXIII, XXXV, XL) to a Russian entity or for use in Russia, or the provision of technical services in connection with these goods or intermediate products. The circumvention clause (Article 12 and

Article 12g Russia Embargo Regulation (EU) 833/2014, in its current version) is recognized and complied with by the recipient and end user. The Buyer shall oblige its customers, distributors and other business partners accordingly to the above provision and shall take reasonable and appropriate measures to ensure that circumvention transactions are excluded. As an appropriate remedial measure in the event of a suspected violation and insofar as this is necessary for the performance of export control checks by the authorities, the buyer shall, upon request, immediately provide all information about the final recipient, the final destination and the intended use of the goods delivered by the Seller as well as any export control restrictions applicable in this respect. The buyer shall indemnify the Seller in full against all claims asserted by authorities or other third parties against the Seller due to non-compliance with foreign trade and/or export control obligations by the buyer and undertakes to compensate the Seller for all damages and expenses incurred by the Seller in this connection, unless the buyer is not responsible for the breach of duty. This does not imply a reversal of the burden of proof.

## §13. Confidentiality

(4) Unless otherwise explicitly agreed in writing, the information prepared for the Supplier in connection with orders is not considered confidential.

(5) The Supplier notes that it processes the data received from the purchaser in accordance with the German Federal Data Protection Act and the General Data Protection Regulation. Personal data is also stored by affiliates and companies executing the deliveries (Article 6 (1) sentence 1 (f) GDPR in conjunction with Recital 48).

## §14. Applicable Law, Legal Venue

(1) For these terms and conditions and all legal relationships between the Supplier and the purchaser, the law of the Federal Republic of Germany under exclusion of the conflict of laws and the United Nations Conventions on Contracts for the International Sale of Goods apply.

(2) If the purchaser is a merchant as defined by the German Commercial Code (HGB), a legal entity under public law, or special fund under public law, our company's place of business has exclusive jurisdiction for all disputes that arise directly or indirectly from this contractual, unless a different place of jurisdiction is prescribed.