

General terms and conditions of PTM GmbH

A. General points

I. Scope of application

1. These sales, delivery and installation conditions shall apply to all business transacted between PTM GmbH, hereinafter PTM, and its customers, provided that these are not consumers as defined in the German Civil Code.
2. These general terms and conditions shall apply to all contracts - including future contracts - for deliveries or other services, and also to contracts for work and contracts for labour and materials. This provision shall apply even if the customer has for example notified PTM of their own conflicting general terms and conditions. The customer's conditions shall not be recognised even if PTM did not expressly reject them after receipt.
3. All arrangements must be in writing even an agreement providing for the written form to be rescinded unless a different intention is expressed in these terms and conditions.
4. PTM's terms and conditions, as amended, shall apply unless the customer objects to the changes in writing within one month of receiving notification of them.
5. Clause A of these conditions shall apply to every type of contract. In addition, clause B shall apply to purchase and assembly contracts, and clause C shall apply to assembly and service work and warranty claims.

II. Quotations and specification of services

1. The quotations made by PTM are subject to change. Oral agreements and assurances made by our employees will not become binding until they have been confirmed in writing by PTM.
2. The details, illustrations, drawings and technical data as well as the specification of services in the catalogues, brochures and advertisements are non-binding in all cases and do not lead to a quality agreement unless they are expressly described as binding in the order confirmation.
3. PTM holds the property rights and copyright to cost estimates and drawings as well as to other documents. These documents must not be made available to third parties and must be returned on request. Third parties also include companies associated with the customer by personal relationship or under company law.

III. Conclusion and contents of the contract

1. The conclusion of the contract and its contents are determined by the written order confirmation.
2. If the order confirmation differs from the customer's order, it will nevertheless form the basis of the contract unless the customer immediately objects to this or if they accept the delivery or services by PTM unconditionally or perform the service themselves unconditionally.
3. All public levies (taxes, fees, customs duties etc.) arising out of or in connection with the conclusion or performance of the contract outside the Federal Republic of Germany shall be borne by the customer.

IV. Payment and billing

1. All payment periods start from the date of the invoice. Payments made to meet the claims made by PTM against the customer must be made in accordance with the payment conditions granted us. Unless otherwise stipulated or provided for differently on the invoice form, payment shall be made without deductions within 7 days from the date of the invoice. Remittances sent to one of the bank accounts specified by PTM as well as payment by cheque will be regarded as paid only after the funds have been cleared in a PTM bank account.
2. Where a bill of exchange is received by PTM, only the redemption of the bill of exchange will be regarded as payment. Discount and bank charges as well as the taxes due on these shall be payable by the customer.
3. PTM is not responsible for the timely and correct presentation, protest or collection of bills of exchange or cheques.
4. If a customer falls behind completely or partially with a payment, PTM shall be entitled to charge interest in commercial dealings from the respective date at the applicable debit interest rate of the commercial banks, but at a rate that is at least 10 percentage points above the applicable base interest rate. A flat rate for administrative costs of 6% p.a. will also be payable.
5. If the customer is more than 3 weeks in arrears with a payment or does not honour a cheque or a bill of exchange on the due date or doubts arise for other reasons about their ability to pay, all payment obligations due to PTM shall become due for immediate payment, regardless of the term of any incoming bills of exchange. Furthermore, PTM shall be entitled to demand the provision of securities on account of all other claims, to make outstanding deliveries only for advance payment or on the provision of securities, to prohibit the handling, processing and/or further resale of goods owned or co-owned by us and to demand their return.
6. Set-offs by the customer shall be excluded unless the counter claim is legally valid, undisputed or recognised by PTM.
7. Payments (including part payments and payments on account) will be used in all cases to pay the oldest claims, the accrued interest and the flat rate for administrative costs.
8. PTM shall be entitled without the consent of the customer to transfer to third parties, in whole or in part, due or future monetary claims arising from the contractual relationship. A prohibition of assignment or requirement of approval in the customer's terms and conditions shall be expressly excluded.

V. Retention of title and return of goods

1. The delivered item shall remain the property of PTM until all claims that have arisen in connection with the delivery contract have been met in full.
In other respects the following shall apply:
 - a) Any machining and processing of the delivered item subject to retention of title as well as its combination with externally manufactured components carried out by the customer or third party shall be performed for PTM. PTM shall be entitled to co-ownership of newly created objects in proportion to the value of the delivered item.
 - b) The customer has the right to resell the purchased goods in the ordinary course of business.
 - c) The customer shall assign to PTM all claims arising from the resale of the delivery item in order to secure their claims, regardless of whether the delivery item has been resold without or after processing. PTM undertakes to release the collateral to which the customer is entitled on their request to the extent that the estimated value of the collateral at the time of the request for its release exceeds on a more than temporary basis the value of the claims to be secured including the costs by more than 80%. It shall be for PTM to select the claims to be released.
 - d) The customer shall be authorised to collect their claims. PTM reserves the right to disclose the assignment and collection.
 - e) The customer is obliged to handle the delivered item with care. In particular they are obliged to insure it at delivery value at their own expense against machine breakage and damages arising from fire, water and theft.
 - f) If the customer acts in a way contrary to the contractual obligation, in particular in the event of default in payment, PTM shall be entitled to take back the item and the customer shall be obliged to return it.
Because of the retention of title PTM can however only demand the surrender of the delivered item if PTM has withdrawn from the contract. If the delivered item is taken back, PTM shall be entitled without proof of damage to charge the customer a reduction in value of 25% for the first half year of use of the delivered item and 20% for each subsequent half year. The customer's right to prove the item has reduced in value by a lesser amount shall remain unaffected by this.
 - g) The customer must neither pawn the delivered item nor assign it by way of security to third parties.
2. The customer must notify PTM immediately of distraints or other impairments of the owner's interests.

VI. Disruptions in performance and defects

1. Insofar as the obligation to perform has been or can be excluded for the reasons prescribed in the law (section 275 of the German Civil Code (BGB)) the customer can demand compensation and/or withdraw from the contract unless PTM is not responsible for the reason that led to the exclusion of the obligation to perform. However, the one-off claim for damages by the customer shall be limited to 5% of the value of that part of the delivery that cannot be used on time or as provided in the contract because of the exclusion of the obligation to perform. Further claims for damages because of the exclusion of the obligation to perform shall be governed solely in accordance with section VII of these conditions. In the case of a partial performance the customer can withdraw from the contract only if it can be proved that the partial performance is of no interest to them. If the customer is not then entitled to withdraw from the contract under this provision, they can demand a reasonable reduction of the counter-performance or refuse the payment for the part of the service for which the obligation to perform is excluded. Withdrawal is likewise excluded if the customer is solely or overwhelmingly responsible for the circumstance leading to the exclusion of the obligation to perform or the customer is in default in accepting delivery and PTM is not responsible for the circumstance leading to the exclusion of the obligation. In these cases the customer shall remain obliged to render a counter performance.
2. In as much as strikes or lock-outs, instances of force majeure or the occurrence of unforeseen events outside the control of PTM which substantially alter the economic importance or the contents of the delivery or have a substantial effect on PTM's business and these named events occur on a more than temporary basis, the contract will be suitably adjusted, according to the requirements of good faith. Should this be economically unjustifiable, PTM can withdraw from the contract or, in the case of a long-term supply relationship, terminate the contract for good cause.
3. No claims may be made for defects of quality for minor impairment of usability, for natural wear or damages which arise after the transfer of risk due to incorrect or negligent handling, excessive load, unsuitable production equipment, defective construction or assembly work by the customer or processor in the delivery chain or the end user, unsuitable foundation soil, chemical, electrochemical or electric influences, or which arise due to special external influences for which PTM is not responsible. If the customer or a third party improperly carries out further processing, modifications or repairs, claims for defects or other claims shall be excluded for such work and for any consequences arising therefrom. That also applies if the customer or a third party has fitted or installed parts manufactured by other manufacturers.
4. Claims for defects shall also be excluded if the customer has failed to inspect the delivered item carefully immediately after delivery by PTM as far as is feasible in the proper course of business, and has not notified PTM immediately in writing of any defects discovered. Any defects that cannot be detected even after examination (hidden defects) must be notified in writing immediately after discovery. If defects are not reported in writing in good time, claims on account of such defects shall be excluded.
5. If the delivered item has been modified and fitted during installation by the customer or third party using parts manufactured by other manufacturers, defects arising from this additional equipment and its fitting shall be excluded.
A warranty for defects will also not be given if the customer fails to follow all the supplier's and manufacturer's installation and operating instructions.
Ordinary wear and tear and damages due to negligent or improper handling,

particularly due to excessive load on the delivered item, shall be excluded from the warranty.

6. In the case of material defects within the warranty period PTM will at its discretion repair or replace the defective parts free of charge (subsequent performance). PTM can refuse subsequent performance if this involves disproportionate expenditure and/or costs. If the customer has set PTM a reasonable time-limit for supplementary performance which PTM has failed to carry out, the customer can withdraw from the contract, or terminate contracts with continuous delivery, or to reduce the remuneration.
7. It is only in urgent cases of danger to operational safety or safety in other areas that the customer is entitled to rectify the defect themselves, or to have it rectified by a third party, or to claim appropriate compensation of their costs from PTM. Self-remedy of defects requires the prior consent of PTM. The customer can also undertake the self-remedy of defects if there is a delay on the part of PTM in rectifying the defect. Where the self-remedy of defects is carried out or executed by a third party, the maximum costs PTM will reimburse are the costs that it would have incurred in rectifying the defects itself.
8. There is no obligation on PTM to carry out an inspection of any repairs and nor PTM will assume liability for defects in parts supplied to it by the customer or an intermediate supplier chosen by the customer.
9. PTM can limit its liability by assigning the warranty claims it is entitled to make against the subcontractor in the case of other third party products that can be used by PTM in the manufacture of the delivered item without significant processing. If PTM exercises this right, it shall be liable for secondary liability for those claims which the customer was not able to enforce against the subcontractor in the legal proceedings to be instituted in advance. PTM will support the customer in these legal proceedings, if necessary joining the proceedings as an intervenor.
10. Any further claims for damages or reimbursement of expenditure, e.g. a loss in profit sustained by the customer, against PTM, its executive bodies, legal representatives and/or its vicarious agents shall be excluded. That shall not apply in the case of intent or gross negligence on the part of PTM, its executive bodies, legal representatives and/or its vicarious agents and/or if material contractual obligations have been breached. Where there has been a breach of material contractual obligations, the extent of liability is, however, limited to the compensation for typically foreseeable damage if there was only simple negligence on the part of PTM, its executive bodies, legal representatives and/or its vicarious agents.
11. Subject to another agreement with the customer, the period of warranty shall amount to 12 months as from the transfer of risk for new parts, as well as 6 months for refurbished parts.

VII. Liability and indemnification

1. Unless otherwise stipulated in these general delivery conditions or under mandatory applicable legal provisions, claims for damages and expenditure by the customer against PTM, its executive bodies, legal representatives and/or its vicarious agents, irrespective of the legal ground, in particular because of breach of an obligation and/or because of a tortious act, shall be excluded. That shall not apply in the case of intent or gross negligence on the part of PTM, its executive bodies, legal representatives and/or its vicarious agents and/or if material contractual obligations have been breached. Where there has been a breach of material contractual obligations, the extent of liability is, however, limited to compensation for the typically foreseeable damage if there was only simple negligence on the part of PTM, its executive bodies, legal representatives and/or its vicarious agents. This limitation of the extent of liability applies, however, to all types of negligence in the case of ordinary vicarious agents. Furthermore, liability is then not limited if PTM's liability is mandatory under the law, e.g. under the German Product Liability Act and/or in the event of injury to life, limb or health.
2. In other cases, however, PTM assumes liability towards the customer to the extent to which its existing business liability insurance provides compensation. The business liability insurance is based on the "General terms and conditions for business liability insurance".
3. The statutory limitation periods apply to all claims for damages.
4. Claims for defects of title due to the infringement of third party intellectual property rights (property rights) shall exist only if these rights exist in the Federal Republic of Germany. Furthermore, liability by PTM shall exist only if the customer uses the object in accordance with the contract and third parties lodge justified claims against the customer. Where liability arises because of such defects of title PTM shall obtain the right of further use for the customer or modify the delivered item in a manner that is reasonable for the customer so that the infringement of rights no longer exists. The customer can withdraw from or cancel the contract if the defect of title impairs the use of the object to a significant degree, or they can reduce the remuneration if they have set an adequate time limit for subsequent performance that PTM failed to carry out after being given sufficient opportunity to do so.
5. If circumstances arise that may lead to a recall or a comparable action of the products supplied by PTM to the customer, the first party to suspect or learn of the existence of such circumstances shall immediately inform the other party. Action to remove products from the market or carry out product modifications in the market are to be agreed with the other party in question insofar as they affect their interests. The parties shall in such cases cooperate in the best way possible. PTM will then assume liability for such actions insofar as they are mandatory under the law.
6. Unless otherwise stipulated in these general delivery conditions or other agreements with the customer, PTM is not liable for alterations made by the customer to PTM's scope of delivery without PTM's prior written consent in cases where standard components have been delivered in accordance with specification or sample. Nor shall PTM be liable for damage caused resulting from the installation or incorporation of PTM's scopes of delivery in a particular location by the customer, unless PTM had previously consented to the customer's procedure in writing in full knowledge of all the circumstances.
7. If third parties assert claims against PTM and the above-mentioned prior written consent by PTM has not been given and a cause of the damage lying within PTM's area of responsibility cannot be ascertained, the customer shall indemnify PTM against these third-party claims.

VIII. Warranty

1. The acceptance by PTM of warranties and feature descriptions or of the procurement risk must have taken place explicitly, be identified as such and be in a written form.
2. All other information which PTM imparts to the customer does not constitute a warranty at any time or an assumption of the procurement risk.

IX. Withdrawal by PTM

1. PTM can withdraw from the order partially or in full if
 - a) insolvency proceedings have been instituted on the customer's assets, or if an application for the initiation of insolvency proceedings is rejected, a written credit report is received by PTM which indicates that the customer is not credit worthy, or the customer ceases their business operations or threatens to do so for other reasons.
 - b) the delivery or installation date is deferred in accordance with these conditions and PTM has no further interest in the delivery or installation because of this delay,
 - c) material circumstances that formed the basis on which the contract was concluded have changed so drastically that PTM cannot be reasonably expected to adhere to the terms of the contract.
2. The legal rights of withdrawal shall remain unaffected by this provision.

B. Terms and Conditions of Sale and Delivery

I. Transfer of risk and delivery

1. Unless PTM explicitly assumes the shipping of the goods and the associated risks by respective delivery clauses (risk of loss and price risk), the risk shall pass to the customer at the date of notification of readiness to ship the goods. That shall also apply if partial deliveries are made, or if PTM has taken on other services (e.g. installations). The acceptance or receipt of the goods must not be refused on account of insignificant defects. If the despatch or acceptance of the goods is delayed for reasons for which PTM is not responsible, the risk and the readiness for acceptance will be deemed to have passed to the customer.
2. Unless otherwise agreed, the costs for packing, loading and unloading of goods, freight and installation shall be borne by the customer.

II. Prices

1. The prices quoted by PTM are ex-works, strictly net cash and are exclusive of the applicable statutory rate of VAT or other local taxes unless otherwise agreed.
2. The shipping packaging is likewise not included in the prices notified by PTM. Packaging of any type will not be taken back.
3. The prices and conditions in the documents applicable at the time of the conclusion of the contract shall apply unless otherwise agreed. If there is a change in the amounts of levies or other third party costs included in the price agreed, or if new charges are generated, later than six weeks after conclusion of the contract, PTM shall be entitled to a corresponding change of price.
4. The prices shall be calculated upon the cost basis of the quotation. PTM reserves the right to adjust prices after giving the customer due notice if there are changes in material prices, wages, currency fluctuations, statutory value-added tax or other cost factors, such as costs for energy supply, waste disposal or public charges.

III. Dates and deadlines

1. PTM's delivery obligation is subject to the condition that PTM receives the correct supplies on time from its own suppliers unless the incorrect or delayed delivery is due to reasons for which PTM is responsible.
2. Binding deadlines for delivery (delivery dates) must be expressly agreed as such. A stipulated period of delivery (delivery period) does not commence until our written order confirmation has been received by the customer and until the information, technical data and documents to be furnished by the customer have been submitted. Fixed dates shall only then be agreed as fixed dates as defined by the Commercial Code if they are expressly identified as such.
3. Changes to or expansions of the original scope of the contract agreed after contract conclusion will extend or postpone the original delivery periods or dates commensurably.
4. Compliance with delivery periods or delivery dates shall be determined on the basis of the date the goods left the works or the warehouse. Delivery times shall be deemed as adhered to with the notification of readiness for shipment.
5. The delivery date shall be postponed commensurably if there are strikes and lockouts, if deliveries are not made or not made on time by PTM, in cases of force majeure and if unforeseen events occur outside PTM's control. PTM will notify the customer if such events occur and give an estimate of how long they are expected to last. The delivery date shall also be postponed if the customer falls behind with their payments and other obligations for the duration of the arrears or for the time required to clarify any outstanding technical and commercial questions. Provided PTM is responsible for the events stated in this section, the customer may not withdraw from or terminate the contract.
6. Insofar as PTM shall be in default of delivery and damages arise for the customer due to the delay, the customer shall be entitled to claim compensation for delay for each complete week of delay up to a maximum of ½% in total, but to a maximum of 3% of the purchase price of the partial delivery that cannot be used on time or in accordance with the contract because of the delay. The customer retains the right to prove that a greater degree of damage was caused by delay. The right to withdraw from or cancel the contract under the legal requirements because of a delay in delivery for which PTM is responsible after the

expiry of a reasonable period set by the customer for the delivery shall remain unaffected by this.

7. If PTM is in default of delivery, the customer has to state within a reasonable period of time at PTM's request the revised time at which the delivery is to be made. If transport is delayed after readiness for shipment for reasons for which PTM is not responsible, the customer will be charged for the costs arising from storage at the PTM's plant at a rate of at least ½% of the net invoice amount for each month, starting from the time of notification of readiness for shipment. The customer retains the right to prove that the storage costs were less than this. Further claims by PTM shall remain unaffected by this.
8. If the customer's place of business is in Germany, the following shall apply: the customer and PTM shall make the following agreement for setoff in insolvency in accordance with section 94 of the Insolvency Regulation: If the customer is insolvent, claims by PTM against the customer become due on the commencement of the insolvency proceedings, even if they would otherwise not yet be due at that time. If preliminary bankruptcy proceedings have been ordered by a court, claims shall become due according to the court order. The same applies vice versa for claims due to the customer in the event of PTM's insolvency.

IV. Intermediate suppliers

1. PTM's prior consent shall be required if the customer wishes to have one or more intermediate suppliers interposed between themselves and PTM. PTM will not, however, refuse consent if the customer as well as the intermediate suppliers named by them assumes liability for outstanding claims and for compliance with the conditions applicable to the customer and PTM, in the same way as it does for its own liabilities.
2. The customer enters into this liability obligation as soon as they have appointed one or more intermediate suppliers and PTM has confirmed this.

V. Trademark rights

1. All trademark rights to the delivery item or parts thereof applied for or granted to PTM at the time of the conclusion of contract, other existing trademark rights as well as existing copyrights shall remain in the exclusive ownership of PTM irrespective of the sale and the delivery to the customer.
2. An assignment of these rights as well as the granting of licences or the like to the customer are excluded.

VI. Shipping and transfer of risk

1. Unless otherwise agreed the goods shall be prepared for shipping unpacked and unprotected against water. Packaging as well as protective and/or other auxiliary transport devices provided by us based on our experience shall be at the customer's expense.
2. Goods which have been notified in accordance with the contract as being ready for shipping must be collected without delay, otherwise PTM shall be entitled at its discretion to ship the goods at the expense and risk of the customer after a reminder or at its own discretion to store and invoice the goods immediately.
3. Unless otherwise agreed the shipping route and means of shipping as well as the haulage contractor and carrier shall be determined by PTM at the expense and risk of the customer. The risk shall pass to the customer on transfer of the goods to a haulage contractor at the latest when the goods leave the supplying factory. The risk shall also pass to the customer if the goods are confiscated in all transactions and if goods are delivered carriage paid or by door to door delivery. PTM will arrange insurance only on the instruction and at the expense of the customer. The customer shall be responsible for unloading the goods and any costs involved with this.
4. If due to no fault of PTM transport on the intended route or intended location is not possible in the scheduled time, PTM shall be entitled to make the delivery by another route or to another location; the purchaser shall bear any expenses incurred. The customer will be given an opportunity to comment before such action is taken.
5. PTM shall be entitled to make partial deliveries to a reasonable extent. Over- or underdeliveries of the agreed amount as is normal in the industry are allowed.
6. In the case of orders for continuous delivery, PTM is to be notified of calls for delivery and type classification for roughly identical partial quantities, otherwise PM shall be entitled to determine delivery requirements at its reasonably exercised discretion. If the contractual amount is exceeded by the individual calls, PTM shall be entitled to deliver the surplus, but not obliged to do so. PTM shall be able to charge the customer for the excess at the prices valid at the time of the call or the delivery.

VII. Manufacturing equipment and confidential customer data

1. PTM has the right in principle to insure machines, tools and replacement parts 3 years after the end of production (EOP), i.e. after the official discontinuation of series production of the model supplied by the manufacturer (original equipment manufacturer, OEM).
2. Models, matrixes, patterns, samples, tools and other manufacturing devices as well as confidential information provided to the supplier by the orderer or paid for by them in full, may be used for supplies to third parties only with the previous written consent of the orderer.

C. Customer's obligation to cooperate in installation, assembly, service operations and in the performance of warranty claims

1. The customer has to support PTM to a reasonable extent in the provision of the contractual services. In particular they have to provide PTM in advance and in good time with all the information required and ensure access to their plants to enable the work to be carried out, as well as providing instruction on the local safety regulations to PTM's employees and representatives. The customer has to provide PTM on request with the supply connections (power, water etc.) free of charge for it to carry

out its work. Insofar as all or some of the customer's plants are not ready for operation during the work to be carried out by PTM, this does not represent any deficiency in the services provided by PTM and will not give rise to any claims by the customer against PTM.

- The customer has to undertake and provide at their own expense and in good time the following services and materials for installation, assembly and service operations:
2. All earthworks, construction work and other ancillary work falling outside the scope of work in this sector, including the specialists and auxiliary workers required, building materials, machines and tools.
 3. The required equipment and consumables necessary for installation and commissioning, such as scaffolding, lifting gear (e.g. heavy-duty crane) and other devices, as well as lubricants,
 4. Energy and water at the point of use, including lighting,
 5. Sufficient large, suitable, dry and lockable rooms at the place of assembly to store machine components, apparatus, materials and tools, etc., and suitable work and staffrooms for the assembly personnel, including sanitary facilities as are appropriate in the specific circumstances; in addition, the customer has to take those measures on the building site to protect the assets of PTM and installation personnel, which they would take to protect their own assets,
 6. Protective clothing and protective devices required on the installation site due to special circumstances at the assembly site
 7. Before assembly work starts the customer has to provide on their own initiative the information required about the location of concealed power, gas, heating and water lines or pipes and any similar installations as well as any necessary structural load data.
 8. On completion of the work the customer has to ensure that any waste accruing is disposed of appropriately in accordance with the applicable laws.
 9. Before the start of installation or assembly, the materials and objects required for starting work must be provided at the installation or assembly site and all preliminary work before commencing assembly must be so well advanced to enable installation or assembly to be started and carried as agreed without any interruption. Approach routes and the installation or assembly site must be accessible.
 10. If installation, assembly or commissioning is delayed due to circumstances for which PTM is not responsible, the customer shall bear the reasonable costs incurred for idle times and any additional travelling expenditure by PTM or the assembly personnel.

Place of performance, place of jurisdiction and applicable law

1. Unless otherwise agreed, the place of performance for deliveries provided by PTM is Mindelheim and the place of performance for work performances by PTM is the place where the services are provided.
2. Local law shall apply to all legal relations between the customer and PTM excluding the provisions of the UN Convention on Contracts for the International Sale of Goods.
3. The place of jurisdiction shall be the court competent for the headquarters of the supplier. However, the supplier is entitled to institute legal proceedings at the headquarters of the orderer.