

# General Terms & Conditions of Sales, Delivery and Payment

PV-Engineering GmbH – Hugo-Schultz-Straße 14 - 58640 Iserlohn - Germany

## I. General - Scope

1. The terms of business are valid for all current and future business relations between us and the customer.
2. Deviating, contradicting or supplementary General Terms, even if known, will not be an element of the agreement, unless their validity is expressly approved in writing.
3. If not expressly stipulated, the text form is also valid along with the written form.

## II. Conclusion of Contract

1. Our offers are not binding if not otherwise arranged. The right to perform technical changes - within reason - is reserved.
2. The customer must inform us before the agreement is concluded if the goods to be ordered are to be used in the medical field or in aeronautics.
3. With the order of a good the customer has made a binding declaration of his or her desire to acquire the good ordered. The customer is solely responsible for the selection of the good and the quantity thereof.
4. If an agreement is concluded without written statements (order and confirmation) being simultaneously available from both parties, firstly our written confirmation is decisive and, if this is not available, the order of the customer.
5. The information contained in brochures or similar documents provided with an offer, e.g. illustrations, drawings, descriptions, measures, weights, performance and consumption data, data in connection with the applicability of devices for new technologies, are only approximate if they have not been expressly arranged as binding.
6. If several customers are party to the agreement, these will mutually empower each other in all the affairs affecting the purchase to accept our legally binding declarations. The goods or services will be provided by us to any of the customers for and against all the other customers.
7. We are permitted to accept the contractual offer of the order within two weeks after we have received it. The acceptance will be made by means of a written confirmation or by delivery of the goods to the customer.
8. Changes or amendments of an order must always be confirmed in writing by us.
9. The conclusion of the agreement is always with the proviso that any delivery to us by any suppliers is correct and on time. This is valid only for the case that the failure of the delivery is not our fault, especially with the conclusion of a congruent covering transaction with our supplier. The customer will be immediately informed about the unavailability of the good. The counter-performance will be immediately reimbursed.
10. The applicability of § 312e I No. 1-3 BGB (German Civil Code) is excluded.
11. If the customer has ordered the goods electronically, the contractual text will be stored by us and sent to the customer upon request along with the present General Terms via e-mail.

## III. Retention of Ownership

1. We retain the ownership of the goods until the complete settlement of any and all claims involving the current business relationship.
2. For the duration of the ownership retention the goods in our ownership are to be insured against fire, water, theft and burglary, whereby the customer's rights to the insurance are to be assigned to us. We will accept this

assignment.

3. The customer is obligated for the duration of the ownership retention to inform us immediately of any action by third parties involving the goods, for instance a pledge or any damages or the destruction of the goods. The customer is to inform us in due course of a change of possession of the goods or a change of the customer's location. Should the third party of a pledge not be in a position to reimburse us for the court costs or out-of-court costs of litigation in accordance with § 771 ZPO (German Code of Civil Procedure), the customer is liable for the financial loss incurred for us. The customer may not place a pledge on the goods or assign the goods as security.
4. We are permitted to withdraw from this agreement and request the return of the goods in cases where the customer violates the agreement, in particular when the customer is in arrears or violation of the obligations of 2 or 4 of this clause.
5. The customer is permitted to sell or further process the good in a proper business transaction. The customer will assign any claims resulting from the same claims with all collateral rights to the amount of the invoice plus 20 % prior to others which result for the customer towards third parties due to the sale and/or further processing. We hereby accept the assignment. After the assignment the customer is empowered to collect the claim(s), but not to further assign and/or pledge and/or agree upon assignment forfeitures with subsequent acquirers or other third parties. We retain the right to collect the claim ourselves as soon as the customer does not properly meet the payment obligations and comes into arrears. With (threatening) insolvency or in the case of the opening of insolvency proceedings or insolvency, the customer is to announce the assigned claims and their creditors to us in due course, inform the creditors of the assignment and to provide us with all the documents required for collecting the claim.
6. The processing of the good by the customer is always performed in our name and at our order. If the processing is performed with objects which do not belong to us, we acquire a co-ownership of the new object in a percentage equal to the value of the good supplied by us plus 20 % to the other processed objects, whereby the new object is to be held in safe custody and free of charge by the customer. The same is valid if the good is mixed with other objects which do not belong to us.
7. We obligate ourselves to release our securities upon the request of the customer to the extent that the value of the securities exceeds the claims to be secured by more than 20%; the selection of the securities to be released is ours.

#### **IV. Prices/Payment**

1. All prices offered are binding, are valid only for the volume given, less packaging and freight and are ex works plus the statutory value-added tax.
2. Should our total production costs, e.g. for materials, energy, fuel, freight and/or wages/salaries increase or decrease between the conclusion of the agreement and the delivery, we are authorized to adjust the sales price and transport costs correspondingly, without consideration of the offer or the order confirmation.
3. We retain the right to increase the price of the good for any fees increasing the price of the good resulting from federal or state legislation, whereby the customer does not derive the right to withdraw from the agreement for this reason.
4. Payment of invoices is due in EURO as payment in advance (bank transfers only) before the shipment of the goods. Other payment terms, in particular the acceptance of bills of exchange and checks require a written agreement.
5. The customer will pay interest to the amount of 8 % on top of the basic interest rate during the period of arrears. We retain the right to prove higher damages and to assert these.
6. Payments made will be used to offset the oldest claim. Checks and bills of exchange will only be accepted if this has been previously arranged, provided they can be cashed and only in fulfillment of debt; there is no obligation to accept a bill of exchange. We are permitted to offset claims by the customer which the customer has against a parent, subsidiary, sister or other associated company.

7. In case of an advance payment or partial delivery, the advance can only be set off with the final payment.
8. Credit for bills of exchange or checks will be granted subject to collection and less any costs or fees incurred for us.
9. Customer rights for offsetting accounts or a right of retention for the payment may only be exercised when the customer's counter-claims have been legally stipulated or accepted by us.
10. A right of retention may only be exercised when the customer's counter-claim is based on the same contractual relation.
11. Special terms of payment are reserved for deliveries to foreign countries.
12. Payments may only be made to our employees if the employees can prove they have the appropriate collecting power.
13. In cases of essential changes of the economic situation of the customer, especially in the case of (threatening) insolvency, we are permitted to either withdraw from the agreement or to request an advance payment or security for the entire, or part of the, purchase price. Should the customer refuse to provide such security, we are also permitted to withdraw from the agreement after an appropriate grace period has passed. Should the customer fall into arrears with (partial) payments as a result of (threatening) insolvency, we are permitted to withhold any additional deliveries until the claims due have been paid. The customer's obligation to accept remains unaffected.

## **V. Transport/Delivery/Transfer of Risk/Packaging**

1. If no other agreements are made, we will select the mode of transport and the goods will be transported at the cost and risk of the customer unless otherwise arranged.
2. The risk of the accidental destruction or accidental damage of the goods is transferred at the pickup from the factory, for sales to be sent at the buyer's instructions with the delivery to the forwarder, the carrier or the person or institution otherwise charged with performing the forwarding. Conclusion of transportation insurance will be made - if not otherwise arranged - exclusively by the customer.
3. Partial deliveries are permitted.
4. Should the customer be delayed in fulfilling his or her obligations with respect to provision or cooperation after a written reminder, we are permitted at our choice, under written declaration of a grace period of 14 calendar days, to withdraw from the agreement or request compensation.
5. Goods which have been reported as ready for shipping must be collected by the customer in due course, at the latest within a period of 10 calendar days after the announcement. If the goods are not collected, we are permitted to store the goods at our discretion at the cost and risk of the customer and to invoice the goods as delivered ex factory. The storage fee will equal 1 % of the invoice for each month begun and is limited to 5 % of the invoice sum, whereby we have the right to prove higher storage costs.
6. The persons signing the bill of lading are considered by us to be authorized to accept the goods and confirm the receipt; by signing the bill of lading the contents of our list of suppliers are considered to be recognized.
7. The transfer is completed even if the customer is delayed in the acceptance.
8. Without instructions the shipping will be performed at our discretion, but with no obligation to the least expensive shipping. Additional costs incurred by partial deliveries will be borne by the customer.
9. For call orders we grant - unless otherwise agreed upon - a period of 3 months from the date of the order. If the acceptance period is past we are authorized at our choice to either invoice the good or to cancel the order with regard to the unprocessed part of the agreement.
10. Delivery dates are - if not expressly stipulated - never binding. Delays in delivery allow the customer to withdraw from the agreement only after an appropriate grace period, whereby non-compliance of the customer to contractual obligations such as providing materials, documents, permits, releases and the adherence to the terms of payment

agreed upon, including advance payments, etc. nullify the obligation to deliver on time.

11. The buyer is obligated in case of a delay in delivery to state in due course at our request if the buyer intends to withdraw from the agreement as a result of the delay in delivery or if the customer insists on fulfillment of the agreement.
12. A force majeure for us or one of our suppliers, e.g. operating interruptions of any kind, in particular defective machines, strikes, stoppage of work, lockouts, lack of raw materials needed for production through no fault of ours, traffic disruptions, transportation delays and any other circumstances for which we are not to blame which hinder us or our suppliers in the punctual, correct performance authorize us, at our discretion, to terminate or suspend the obligation to deliver either entirely or partially. The customer remains obligated to accept the goods in cases where the delivery times are exceeded.

## **VI. Liability for Defects**

1. We will either replace or correct defects in the goods delivered as we chose. In case of a correction we will bear any expenses required for labor and material costs.
2. Minor defects do not authorize the customer to refuse acceptance of the delivery.
3. The customer must report obvious defects to us in writing within a period of 8 calendar days after receipt of the goods and before processing the goods, otherwise the assertion of claims for defects will be forfeited. To meet the deadline it is only necessary to send the notification of defects punctually. Should the notification of defects be made verbally or via telephone - due to the urgency - it will require a written confirmation. The goods are - to the greatest extent possible - to be left untouched for the purpose of the inspection of the supposed defects by us.
4. The customer bears the entire burden of proof for all prerequisites for the claim especially for the defect itself, for the time it was determined and the punctuality of the notification of the defect.
5. Should the customer choose to withdraw from the agreement following a legal or material defect, pursuant to a failed correction, the customer has no claim for compensation resulting from the defect.
6. Should the customer choose compensation pursuant to a failed correction, the goods remain at the customer, if this is reasonable. The compensation is limited to the difference between the purchase price and the value of the defective good. This is not valid if we have maliciously violated the agreement.
7. Claims for defects become invalid after one year from the date of delivery. Claims are invalid if the defect is not reported in time (point 3 of this clause)
8. We assume the liability for defects only for strains and use of the goods under normal, operational and climatic conditions. If the good is intended for special conditions and we were not previously informed or the customer alters the object improperly, liability for material defects is forfeited.
9. The nature of the goods is in principle agreed to only on the basis of our product description or the offer. Public statements, recommendations or advertisement do not represent a contractual quality of the goods.
10. Should the customer obtain a defective installation or operating manual, we are obligated only to deliver the fault-free manual and that only if the error in the manual stands in the way of the proper installation.
11. The customer is not granted guarantees in legal terms. Possible manufacturing guarantees are not affected by this.

## **VII. Limitations of Liability**

1. In cases of minor negligence and not unessential violations of obligations our liability is limited to foreseeable, typical for the contract and direct average damages for the type of the good. This is also valid for cases of minor negligence and not unessential violations of obligations of our legal representatives and agents.

2. The above limitations of liability do not affect the customer's claims regarding product liability. In addition, the limitations of liability are not valid for physical damage or damage to health or loss of life of the customer attributable to us.
3. Claims for damages by the customer due to a defect are valid for only one year after the delivery of the good. This is not the case if we are to blame for gross negligence or malicious intent or in the case of physical damage or damage to health or loss of life of the customer attributable to us.
4. If our products are to be used in the medical field or in aeronautics, it is necessary to obtain our prior approval.

### **VIII. Contractual Return Privileges**

1. If a return privilege is contractually arranged for specific products, the product must be handled carefully and returned to us at no cost in a complete and flawless condition in the original packaging at the time arranged. If the product is sent it must be in a transport-safe package and insured at the cost of the customer. The costs for the sending - both directions - is borne by the customer.
2. The return privilege for sealed goods is forfeited if the sealed packaging is opened or damaged. The same is true for software downloads from our Internet pages.
3. Individually produced or personalized licenses or products are excluded from a return.

### **IX. Data Protection Statement**

We store and process all personal data known to us only for the purpose of performing the specific contract and only to the degree that it is required to protect our legitimate interests and that, following detailed consideration of interests, there is no reason to assume that the interests of the customer to exclude processing or use, which deserve to be protected, are greater. To that extent the customer approves the storage, transmission and use of his or her data.

### **X. Final Clauses**

1. Jurisdiction for all obligations is Iserlohn.
2. The law of the Federal Republic of Germany is applicable. The regulations of the UN CISG are not applicable.
3. The contract language is German.
4. If the customer is a businessperson, a legal entity of public law or public law assets, the place of jurisdiction for any disputes resulting from this agreement is exclusively Iserlohn. The same remains valid for any and all current and future claims from the business relation, be it that the party subject to the claim of the legal action has moved its residence or normal abidance outside of the valid territory of German Law or that it was never there, be it that it is unknown at the time of the litigation. The same is valid for the case that claims for a check, bill of exchange or a dunning procedure are to be asserted.
5. Should any individual provision or any part of any provision of the agreement with the customer including these General Terms and Conditions be or become void, illegal or unenforceable, the validity of the remaining provisions hereof shall in no way be affected. In such case the void and/or illegal and/or unenforceable provision or provisions shall be replaced by relative provisions coming as close as possible to the commercial sense and spirit and purpose of the invalid provision.

Iserlohn, 1 August 2018