

**General Terms and Conditions of Sales and  
Deliveries  
of PMS Elektro- und Automationstechnik GmbH  
(PMS)**

Version 191201

**1. Scope of Application**

- 1.1. All quotations, contracts, deliveries and performances by PMS are exclusively governed by these General Terms and Conditions of Sales and Deliveries.
- 1.3. Conflicting terms and conditions of the customer shall only form part of the contract if PMS has expressly agreed in writing to their application for the individual business transaction.

**2. Offers / contract inception**

- 2.1. Quotations from PMS are non-binding and subject to change. PMS prepares its cost estimates to the best of its knowledge, but does not assume any warranty for their accuracy. No separate agreement is required for cost overruns of less than 20%; these additional costs may be invoiced without any further requirements. Changes or additions to orders, as well as all costs attributable to the customer may be invoiced at a price determined at PMS' reasonable discretion.
- 2.2. The customer will be required to pay extra compensation for the preparation of quotations, plans, cost estimates and similar.
- 2.3. All drawings and calculations remain non-binding until they are confirmed as final. Any resultant liability is excluded.
- 2.4. A contract is deemed incepted upon PMS confirming the customer's order in writing.
- 2.5. In the case of just-in-time orders, PMS is authorised to procure the materials and human resources for the entire order and produce the entire ordered quantity without having to observe any waiting period. Potential requests for changes from the customer cannot be accommodated after order placement, unless expressly agreed otherwise. Partial deliveries are permitted.

**3. Terms of Delivery**

- 3.1. The customer must obtain any regulatory and third-party permits required for the installation of equipment prior to the agreed delivery date.
- 3.2. PMS may render partial and advance performance and issue partial invoices.
- 3.3. PMS is without limitation permitted to involve subcontractors in its performances.
- 3.4. Unless expressly agreed as binding, delivery dates are non-binding and represent the expected date of arrival and hand-over to the customer. Agreed delivery dates become binding dates only if the customer has performed all its obligations, particularly including the timely provisioning of the documents, clarifications and approval of all plans and drawings, and adheres to the agreed payment terms.
- 3.5. FCA Incoterms 2020 apply; the goods must be called for delivery immediately after notification of their readiness for shipment; if they are not immediately called for delivery, PMS will take the goods into storage at the customer's risk and cost.
- 3.6. Delivery is deemed made in due time if the goods are made available at the place of performance within the agreed delivery period, if the customer is notified of their readiness for shipment, or if PMS has rendered performances at the place of performance.
- 3.7. Unless agreed otherwise, the customer shall bear all transportation costs.
- 3.8. If the goods are delivered out of time without PMS being at fault, delivery shall be deemed made in good time upon notice of their readiness for shipment and irrespective of the agreed application of Incoterms.

**4. Place of performance/ transfer of risk**

- 4.1. Unless agreed differently, the place of performance is the factory of PMS. Where the contracted performances are rendered in the customer's premises or at the customer's construction site, such place shall be deemed the place of performance.
- 4.2. If the place of performance is the PMS factory, the risk will transfer upon the freight forwarder or carrier taking possession of the goods.

**5. Dimension, weights, surcharges**

Weights will be determined by PMS and are authoritative for invoicing. Weights are evidenced by presentation of the weighing slip, metal surcharges will be determined on the basis of the manufacturer's specifications.

**6. Safety, accident prevention**

- 6.1. The customer shall inform PMS in due time, usually four weeks prior to the start of the installation, of the safety regulations applicable at the installation location. This in particular includes the accident prevention regulations.

- 6.2. The customer shall take the necessary safety precautions for the protection of persons and property at the installation location, including any necessary location-specific measures at the installation location.
- 6.3. The customer shall instruct PMS' installation personnel on site about the existing safety requirements in as far as they bear relevance for the performance of the installation. If the customer has appointed a construction or project manager, that person must assure that the safety requirements in general and the accident prevention regulations in particular are observed by PMS' installation personnel.

**7. Customer's obligations to cooperate**

- 7.1. The customer undertakes to obtain all necessary permits from public authorities and permissions under private law from third parties that are required for commencement of the performances to be rendered by PMS with the objective of assuring that the installation and other performances can take place at the installation location without impediment. This particularly applies for special permits required for overtime work on Sundays and public holidays, as well as specific hazards at the installation location.
- 7.2. The customer must assure that the constructions works can be carried out without any impediment or limitation under statutory or private law (such as the building code or zoning regulations), and that the installation site has been properly prepared to allow for efficient installation works. The Customer is in particular required to render the following performances/make the following provisions at its own cost and risk and make them available at the installation location in due time:
  - Qualified skilled workers and helpers equipped with the necessary tools. The customer's personnel must be qualified for the respective works and ready to carry out their work in accordance with the instructions issued by PMS' installation personnel. PMS does not accept any liability for damages and defective performances rendered by the customer's own personnel.;
  - The construction of all foundations and any required structures above and below ground on which system components are to be installed, including the sealing of anchoring excavations, sealed roads suitable for heavy vehicles to access the installation site;
  - Provision of the axillary equipment required for installation and commissioning or repairs, e.g. tools, lifting equipment, welding equipment, all personal protective equipment required by the employers' liability insurance association, materials such as lubricants, hydraulic oils, scaffolding timber, wedges, support for adjustment and alignment, cleaning and sealing agents, all energies/utilities such as electricity, water, pressurised air, welding gases, fuels and their respectively required connections at the installation site. Where required installation materials are not available at the installation site, they will be procured by PMS' installation personnel. PMS may invoice the customer for the resultant costs at reasonable prices;
  - Dry, illuminated and lockable rooms in direct vicinity of the installation site for storage of switching cabinets, special machine components and tools used by our installation personnel;
  - Suitable staff rooms for our installation personnel for the duration of the installation, equipped with all necessary fixtures such as heating, lights, personal hygiene facilities and toilets;
  - Unloading of the installation components, tools and other equipment at the installation site, unless we have contractually agreed to be responsible for unloading;
  - Adequate storage of the installation components, tools and equipment items with protection against theft, damage and weather exposure at the installation site, as well as their transport to the installation site including loading and unloading, to the extent they cannot be stored in direct vicinity of the installation site;
  - Protective clothing and protective equipment at the installation site;
- 7.3. The technical cooperation by the customer must warrant that the installation and subsequent commissioning can be commenced immediately after arrival of the installation personnel and be performed without any delay or interruption.
- 7.4. If the customer fails to perform the aforementioned obligations, PMS shall be authorised to cease its works and serve a notice of work impediment and/or set the customer a reasonable grace period for the performance of its obligations. After unsuccessful expiry of the grace period, PMS shall be authorised but not required to carry out the necessary actions on behalf and at the cost of the customer.
- 7.5. PMS does not take out a project-specific installation insurance; any insurances are the customer's responsibility.

**8. Acceptance**

- 8.1. The customer shall bear all the costs incurred in relation to acceptance.

8.2. Where performances are not accepted within the agreed period, the risk shall pass to the customer upon PMS notifying the customer of readiness for acceptance.

8.3. The performances shall be deemed accepted after not more than one month from their delivery.

## 9. Reservation of Title

9.1. PMS reserves title to all goods until the customer has performed all its contractual obligations, and in particular until full payment of the agreed price plus interest and expenses (e.g. collection expenses, expert fees) has been received.

9.2. If the goods are transported to a foreign country and the reservation of title is rendered ineffective under foreign property law, the customer must take all measures required for the establishment, safeguarding and enforcement of PMS' title in such goods.

9.3. The combining or mixing of the goods with other goods is not permitted until full payment of the agreed price including interest and costs has been received.

9.4. In the case of an attachment of the goods or other claims, the customer must disclose PMS' reservation of title and promptly inform PMS of the name of the claimant, the claimed amount, the court seized and the corresponding case number.

## 10. Prices and payment terms

10.1. The price agreed between the Parties is exclusive of taxes and does not include any expenses, taxes or levies foreseeable at the time of order placement that may be incurred as a result of the performance rendered. The customer must pay these items separately.

10.2. If PMS is delayed in performing one of its obligations on which payment by the customer depends, the customer shall make payment in accordance with the actual progress made at that point in time. If the customer is in default with an agreed payment or other performances from this or other business transactions, PMS may, without prejudice to its other rights, withhold its own performances until the outstanding amounts have been paid, delay them or rescind the contract without setting a grace period and in this case be entitled to reimbursement of costs and expenses incurred until that point in time.

10.3. If the parties have not agreed on payment terms, 50% of the price is payable upon receipt of the order confirmation, with the remainder payable upon delivery. Payable within seven days including any VAT amounts invoiced in a separate item.

10.4. If insolvency proceedings over the customer's assets are commenced, or if a petition for the commencement of such proceedings is declined due to a lack of recoverable assets, deliveries shall only be made against advance payment.

10.5. Discounts and premiums granted are conditional upon timely receipt of full payment.

10.6. In the event the customer fails to perform its obligations from the business relationship with PMS, or if a demand for payment via the court system or litigation is commenced due to payment default, or in the case of a petition for the commencement of insolvency proceedings over the customer's assets, PMS shall be authorised to rescind any previously granted credits, discounts or other reductions or compensations of any kind and invoice the corresponding amounts to the customer.

## 11. Contract rescission

11.1. PMS may, without being required to set a grace period, rescind all or part of the contract in the case of

- a change in the customer's ownership structure;
- an assignment of claims against PMS and assignment of the collection of claims against the PMS to third parties;
- violations of statutory regulations or the provisions of these General Terms and Conditions of Sales and Deliveries by the customer.

This also applies if

- the customer has entered into agreements with other companies that are detrimental for PMS, morally objectionable or anti-competitive in their nature;
- the customer has directly or indirectly promised or granted benefits to PMS employees of PMS involved in the conclusion or performance of the contract, or has threatened or inflicted disadvantages on them;
- delivery and/or the commencement or continuation of the performance is, for reasons attributable to the customer, rendered impossible or further delayed after expiry of a reasonable grace period;
- there are concerns with respect to the customer's solvency and the customer has failed to comply with PMS' request to make advance payment and provide suitable sureties prior to delivery.

11.2. The customer shall inform PMS of any such circumstances without undue delay. If the contract is rescinded the customer shall, without prejudice to PMS' claims for damages and pre-litigation expenses,

make payment for already rendered performances or partial performances in the contractually agreed manner. This also applies to the extent the customer has not taken possession of the delivered items and performance, as well as to preparatory performances rendered by PMS. PMS is alternatively authorised to request already delivered items to be returned to PMS.

11.3. The customer may only rescind the contract in the case of a qualified default in delivery that is attributable to gross negligence on the part of PMS and after unsuccessful expiry of a grace period. A contract rescission must be declared by registered mail.

## 12. Warranty

12.1. The customer shall inspect the performances rendered by PMS without undue delay and in any case within two working days after their completion and submit a notice of defects in accordance with Section 377 Austrian Commercial Code for any defects. All claims shall lapse if the customer fails to comply with this requirement. Notices of defects require the written form.

12.2. Application of Section 924 of the ABGB (Austrian Civil Code) is excluded. The customer is required to furnish evidence for all defects claimed. The warranty period is twelve (12) months from delivery, or from the date of the notice of readiness for shipment if no delivery takes place. Recourse claims under Section 933b of the Austrian Civil Code (ABGB) shall become statute-barred after the expiry of 12 (twelve) months.

12.3. PMS only owes warranty obligations for concealed defects if the customer has notified PMS of such defects within the warranty period.

12.4. The rectification of defects or other remedial measures under warranty does not result in an extended warranty period.

12.5. The warranty obligation only extends to defects that have occurred in the prescribed operating conditions and during normal use of the performances. The warranty does not cover wear parts and minor damages.

12.6. The customer is not entitled to any warranty claims and claims for damages if a defect is attributable to

- the customer having provided incomplete information;
- unauthorised interventions, alterations and repairs by the customer and/or third parties concerning services of PMS without the written approval from PMS;
- improper installation, commissioning or use of PMS' performances by the customer and/or by third parties;
- repair orders, alterations or conversions of existing or third-party systems or performances.

12.7. PMS is authorised to determine remedial measures at its sole discretion. PMS may, at its sole discretion, either rectify defects on site within regular working hours, request the defective item or defective parts to be shipped to PMS for subsequent improvement, or make substitute delivery of the defective item or parts. PMS must be granted the time necessary for an inspection of the defects, for subsequent improvement and/or for delivery of replacement parts or systems.

12.8. All incidental expenses related to the rectification of defects (e.g. installation and removal, transport, disposal, travelling times) shall be borne by the customer. Where warranty works are carried out within the customer's premises, the customer must make the necessary helpers, lifting equipment, scaffolding and sundry materials etc. available free of charge.

12.9. PMS will only cover the costs incurred for defect remedial by the customer or third parties if it has granted its prior written consent to the rectification of defects in that way.

12.10. PMS does not accept liability for damages and does not assume warranty with respect to parts that were procured from upstream suppliers at the customer's express request or express instruction and contrary to the recommendation made by PMS.

## 13. Liability

13.1. PMS shall bear liability for damages caused by demonstrable wilful intent or gross negligence on its part, with such liability in the case of gross negligence to be limited to the order value or, in the case of maintenance performances, to the amount corresponding to the annual price payable for the agreed performances. The liability of PMS for damages is limited to 25% of the tax-exclusive order value per damage event.

13.2. The Parties expressly agree that PMS shall not be held liable for damages to goods that are not included in the contract, other damages and lost profits. Any liability for slight negligence and compensation for consequential damages, purely pecuniary damages, indirect damages, production downtime, financing costs, costs for substitute energy, losses of energy, data or information, lost profits, unrealised savings, interest losses and damages resulting from third-party claims against the customer is excluded.

13.3. Where a performance is produced or rendered on the basis of construction specifications, drawings, plans, models or other information from the customer, the liability of PMS is limited to conformity with the customer's specifications.

13.4. The customer undertakes to fully indemnify PMS against third party claims against PMS resulting from actions or conduct on the part of the customer.

#### **14. Force Majeure**

14.1. Force majeure means external and unforeseeable events that cannot be averted by taking reasonable measures. A Party prevented from rendering its contractual performances due to a force majeure event shall notify the other Party without undue delay.

14.2. If adherence to a delivery date is impeded by a force majeure event affecting PMS, its subcontractors or for reasons outside of the customer's control, delivery shall be postponed by the duration of the relevant circumstances.

#### **15. Intellectual Property Rights**

14.1. PMS reserves all intellectual property rights in its performances.

14.2. The customer shall pay a contractual penalty regardless of fault in the amount of EUR 50,000 (fifty thousand Euro) for each instance and day of the customer infringing against PMS' intellectual property rights.

#### **16. No offsetting / no withholding of payments**

The customer is prohibited from offsetting against PMS' claims and from withholding payment of the full purchase price or partial payments.

#### **17. Confidentiality**

17.1. The customer must treat all contractual documents and information, drawings, calculations and similar information received from PMS or otherwise related to the preparation of quotations or the performance of the contract strictly confidential and only use them for the performance of its contractual obligations. This does not apply to information and documents the customer is required to disclose under a statutory provision or that are already part of the public domain.

17.2. If the disclosure of information and documents to third parties is compulsory, the customer shall require the receiving third party to submit to confidentiality and accept liability for such third-party's adherence to the obligation to confidentiality.

17.3. Each instance of infringing against the obligation to confidentiality shall render the customer liable to pay PMS a contractual penalty in the amount of EUR 100,000.00 (one hundred thousand Euro).

17.4. The customer shall accept liability for violations against this obligation to confidentiality by its employees and subcontractors and fully indemnify and hold harmless PMS in this respect.

#### **18. Applicable law, place of jurisdiction**

18.1. Austrian law applies. Application of the conflict-of-law rules and the UN law on the sale of goods (CISG) is excluded.

18.2. The place of jurisdiction is the court with local and material competence for PMS. PMS may also bring claims against the customer at the local court holding jurisdiction for the customer's place of registered office.

#### **19. Language**

In the event of discrepancies or conflicts between the German version of these General Terms and Conditions of Sales and Deliveries and a version written in another language, only the German version shall have binding effect on the Parties.