

General Terms and Conditions of Purchasing of PMS Elektro- und Automationstechnik GmbH

Version 210506

1. Scope of Application

- 1.1. All contractual declarations and contracts on the purchase of goods and services (collectively: "performance(s)") by a PMS company from a contractor/supplier are exclusively governed by these General Terms and Conditions of Purchasing ("GTP").
- 1.2. Conflicting terms and conditions of the contracting party ("contractor") will only form part of the contract if PMS has expressly consented in writing to their application to the individual business transaction.

2. Offers expressed by the contractor

- 2.1. The contractor shall not be entitled to additional compensation for the preparation of offers, plans, cost estimates and similar.
- 2.2. The contractor's offers must be identical to the precise wording of the request and contain the correct request number. Any alternative proposals must be submitted separately and contain express information on the differences in standards and textual formulations they contain.
- 2.3. Offers that are not fully based on these GTP - and on, if relevant, the special terms applicable to the customer's request in addition to these GTP -, or that invoke application of the contractor's general terms and conditions, will not be accepted by the customer.
- 2.4. By submitting its offer, the contractor declares that all prerequisites for the rendering of its performance have been satisfied and accepts liability for their satisfaction. The contractor may not plead that the documents provided by the customer are unclear or contain errors, or that individual performances customarily considered to form part of the proper performance or otherwise required for contractually compliant performance, have not been stated explicitly. If the contractor has reason to believe that the documents it has been provided with are unclear or contain errors, the contractor shall give prompt written notice to the customer with respect to any such defects or reservations. Such written warning by the contractor shall be transparent for the customer and include substantiated proposals for solution.
- 2.5. Offers by the contractor that do expressly specify an acceptance deadline may be accepted by the customer within 12 (twelve) weeks from receipt.
- 2.6. If a contract is not incepted between the contractor and the customer, the contractor must return all documents pertaining to the intended contract to the customer without undue delay and without solicitation.
- 2.7. The customer is authorised to retain all plans, cost estimates and samples provided by the contractor.

3. Contract inception

- 3.1. The customer's requests for offers made to potential contractors does not give rise to any obligations on the part of the customer.
- 3.2. Orders by the customer are only legally binding when submitted in writing. Orders submitted by email or fax are deemed to satisfy the written form requirement.
- 3.3. The contractor must accept orders placed by the customer without undue delay and in any case within 5 (five) business days after their receipt by furnishing the contractor with an order confirmation; the customer shall not be bound by orders that remain unconfirmed after said period.
- 3.4. Subsequent modifications are only legally effective if instructed or confirmed by the customer in writing.
- 3.5. The contractor is prohibited from subcontracting all or part of an order without the customer's express written approval. This does not apply to any strictly necessary procurement of preliminary materials and/or standard parts and special parts. An infringement against this provision authorises the customer to cancel the order without replacement and is without prejudice to any further claims by the customer.
- 3.6. Any existing negotiation minutes form an integral part of the order and, to the extent agreed, shall take precedence over these GTP.
- 3.7. The contractor is not permitted to challenge or modify the contract for reasons of error (including calculation errors). The contractor waives the right to plead of *laesio enormis*.

4. Early termination of contract

- 4.1. The customer is authorised to terminate all or part of the contract in the case of infringements against essential contractual provisions by the customer and may do so without being required to set a grace period. This is without prejudice to any further claims by the customer.
- 4.2. The customer shall in particular be authorised to terminate the contract for the following reasons:
 - 4.2.1. doubts about the contractor's solvency and the contractor's failure to comply with the customer's request to provide suitable sureties prior to making delivery and/or rendering contractual performances;
 - 4.2.2. a change in the contractor's ownership structure;
 - 4.2.3. an assignment of claims against the contractor and assignment of the collection of claims against the contractor to third parties;
 - 4.2.4. violations of statutory regulations or the provisions of these General Terms and Conditions of Purchasing by the customer.
 - 4.2.5. the contractor has entered into agreements with other companies that entail detrimental effects for the customer, or that are morally objectionable or anti-competitive in their nature;
 - 4.2.6. the contractor has directly or indirectly promised or granted benefits to the customer's employees involved in the conclusion or performance of the contract, or has threatened or inflicted disadvantages on them;
 - 4.2.7. delivery and/or the commencement or continuation of the contractual performance is, for reasons attributable to the contractor, rendered impossible or further delayed after expiry of a reasonable grace period;
- 4.3. The contractor shall inform the customer of any such circumstances without undue delay.

5. Customer's right to assign the contract

The customer is authorised to assign a contract with the contractor to another PMS company; the customer shall in this case continue to be liable to the contractor for the contractor's contractual claims in addition to the new customer's liability.

6. Customer's right to suspend performances

The customer is authorised to request the contractor to suspend its performances and to reschedule contractually agreed dates without being required to state reasons. Any claims by the contractor for damages resulting from interrupted performance and/or rescheduled dates is excluded.

7. Delivery

- 7.1. The contractor is not permitted to unilaterally change the agreed delivery dates. Receipt at the agreed place of performance is authoritative for the timeliness of the delivery and/or performance.
- 7.2. In as far as the contractor is contractually required to provide certifications, certificates, testing reports, quality documents, documents required under the contract or a statutory provision, confirmations, operating, service and maintenance instructions or other documents, completeness of the performance and/or delivery shall be subject to receipt of these documents.
- 7.3. Deliveries made and/or performances rendered prior to their due dates and partial performances are only permitted with prior written approval of the customer and do not give rise to claims for early payment.
- 7.4. The delivered quantity and/or project progress shall be determined by the customer. In the case of a partial delivery or partial performances, the customer is authorised to commence use of the partial performance and/or delivery prior to completion of the full scope of delivery and/or performances without such course of action in any way constituting an acknowledgement of contractually conforming performance.
- 7.5. The contractor must notify the customer in writing and without undue delay of any foreseeable delays in its performance and/or delivery. Acceptance of a delayed performance and/or delayed delivery by the customer does not constitute a waiver of any claims in general and claims for damages in particular.
- 7.6. Where delays do occur, the contractor shall take all measures to minimise the delay. The costs incurred for these measures shall be borne by the contractor.

- 7.7. In the case of a delay attributable to the contractor, the customer is authorised to rescind the contract with immediate effect and without being required to set a grace period. Where a fixed date was agreed, the contract shall be deemed terminated upon such date being missed, unless the customer insists on performance of the contract.
- 7.8. If a postponement was accepted by the customer, the customer expressly reserves the right to charge a contractual penalty of 5% for each week or part thereof of being in delay. If a postponement of due dates for documentation (see clause 7.2) was accepted by the customer, the customer expressly reserves the right to charge a contractual penalty of 1% for each week or part thereof of being in delay.
- 7.9. The goods must be packed and packaged appropriately. The delivery must conform with the regulations pertaining to safety, packaging and hazardous goods applicable in Austria. Deliveries must be accompanied by the relevant papers (and particularly those required under clause 9 of these GTP). The packaging must conform with the applicable packaging standards and warrant damage-free delivery and efficient internal handling at the customer.
- 7.10. All deliveries must be accompanied by a corresponding delivery note stating the customer's purchase order number, item number and delivered quantity.
- 7.11. Contractors/suppliers registered in the EU are obliged to send the original of the (long-term or) supplier's declaration for goods with preferential origin status to the Customer within 3 working days after a request. The Customer is entitled to cancel the order in case the Contractor/Supplier does not fulfill this obligation or any other obligation according to customs law.
- 7.12. The origin of new delivery items or a change of origin shall be notified to the Customer immediately and without being requested. The supplier shall be liable for all damages. If necessary, the supplier must verify his information with document "INF4".
- 8. Place of performance/ transfer of risk**
- 8.1. The risk shall pass upon formal acceptance in the case of performances, and upon completion of unloading at the place of performance in the case of deliveries.
- 8.2. Title in the delivered goods shall transfer to the customer upon completion of unloading at the place of performance.
- 9. Quality and documentation**
- 9.1. The contractor must carry out quality controls that reflect the latest state of the art technology and are suitable in terms of their type and scope. The contractor must present all documents, certificates and certifications required under the contract or a statutory provision in the prescribed form and language. Operating, service and maintenance instructions must be delivered free of charge and without solicitation.
- 9.2. The contractor is liable to the customer for the accuracy and completeness of these documents and shall indemnify and hold harmless the customer in this respect.
- 9.3. In fulfilling the orders accepted by it, the contractor must comply with all standards, statutory provisions and regulations in general and those pertaining to environmental protection, recycling and occupational safety in particular. Corresponding evidence must be presented at the customer's request.
- 9.4. The contractor undertakes to assure that its deliveries comply with the applicable environmental regulations, standards and state-of-the-art technology. The AN shall assure (to the extent economically feasible) an environmental friendly delivery of goods in accordance with environmental law and the current version of the Waste Management Act. This includes the selection of environmentally friendly and recyclable materials, low-emission, low-pollutant and energy- and resource-efficient solutions. The contractor must keep its waste management concept current and updated and present corresponding evidence upon request. If the contractor is ISO 14001-certified, the contractor shall, upon request by the customer, disclose the relevant processes and requirements with respect to environmental management resultant from an audit of the contractor.
- 9.5. All deliveries must conform with the current Austrian, DIN and/or VDE standards, as well as other EU standards and regulations accepted as customary in the industry. The supplier undertakes to comply with the requirements under European Regulation 1907/2006/EC and the EU Directive 2011/65/EU in their versions applicable at the time of delivery, and to perform all obligations

- incumbent on suppliers under REACH-VO and RoHS-RL. The supplier shall make a safety data sheet available to the customer as required under Article 31 REACH-VO. The customer will further inform the customer without undue delay and solicitation prior to a delivery if a component or packaging of a product contains a substance that is regulated under Articles 57 to 59 REACH-VO.
- 9.6. The customer shall warrant that all goods comply with the requirements under RoHS-RL and confirm their compliance with RoHS-RL in writing.
- 9.7. A contractor whose registered office is located outside of the EU undertakes to appoint a representative within the EU to perform all obligations incumbent on the contractor under Article 8 REACH-VO, with the effect of the customer not being treated as the importer under REACH-VO, unless the customer expressly declares its intention to act as the importer under REACH-VO.
- 9.8. The customer reserves the right to rescind or terminate blanket or individual orders where deliveries are not made in compliance with the requirements under REACH and/or the EU Directive 2009/48/EC. The contractor undertakes to inform the customer without undue delay of any changes affecting its compliance with the requirements under REACH. The contractor shall indemnify the customer against all third-party claims arising from non-compliance with the requirements under REACH. Non-compliance with the requirements under REACH shall constitute a defective performance.

10. Acceptance

- 10.1. Inspections, testing, handover or approval of plans etc. shall not constitute acceptance of the contractor's performance by the customer.
- 10.2. Performances rendered by the contractor are only deemed accepted upon written confirmation by the customer.

11. Prices and payment terms

- 11.1. The prices stated in the contractor's offer or agreed between the Parties are inclusive of all overtime, customary packaging, delivery to the place of performance at the contractor's cost and risk, import levies and any other charges, taxes and levies payable by the contractor, and exclusive of value-added tax. In the event the customer is required to remit any taxes and/or levies (with the exception of value-added tax) assessable on the contractor's performance, the agreed price shall be reduced by the corresponding amount. The customer may invoice the contractor for any taxes and/or levies the contractor was required to remit, and/or offset such amounts from future projects and orders. Any modification of this provision requires the prior written consent of both Parties.
- 11.2. Unless agreed differently, payments for contractually agreed deliveries or performances shall be made within 30 (thirty) days from receipt of an auditable invoice less 3% discount, 45 (forty-five) days net, or 90 (ninety) days net in the case of progress invoices, final invoices or partial final invoices.
- 11.3. The payment period commences upon completion of the performance or full delivery, acceptance by the customer if necessary, and receipt of a properly issued invoice and material certificates for the materials ordered after certification per instructions.
- 11.4. Payments made are not to be construed as acceptance of the delivery or performance in accordance with the contract.

12. Offsetting / withholding of payments

- 12.1. Where a performance or delivery is defective, the customer is authorised to withhold payment until the defect has been rectified and without necessarily relinquishing any beneficial payment terms, such as discounts and rebates.
- 12.2. The contractor is not authorised to offset the customer's claims against its own claims against the customer.
- 12.3. The customer is authorised to offset the contractor's claims against its own claims against the contractor.

13. Warranty

- 13.1. The performance must, in particular, be suitable for its intended use, conform with the contractual agreements, reflect state-of-the-art technology, and comply with the applicable standards and requirements imposed by the respective public authorities and professional bodies.
- 13.2. Acceptance or approval of drawings and documents by the customer shall not constitute a waiver of warranty claims.

- 13.3. The warranty period for the contractor's performances commences at the time the performance are rendered in full / delivery is made in full to the customer at the place of performance. Partial deliveries and performances (including where contractually agreed) as well as commissioning or commencing the use of partial deliveries and partial performances by the customer shall not start the warranty period.
- 13.4. The warranty period is interrupted by each written notice of defects.
- 13.5. The contractor waives the plea of a notice of defects served out of time. Application of Section 377 Austrian Commercial Code (UGB) is excluded.
- 13.6. With respect to the contractor's liability for defects occurring during the warranty period, the customer is - without prejudice to its other rights and at its sole discretion - authorised to demand substitute delivery or performance, rectification of the defect(s), a reasonable price reduction, or redhibitory action. In cases where the contractor fails to observe a warranty obligation within a reasonable time, as well as in other cases of particular urgency, the customer shall be unconditionally authorised to rectify the defect by its own means, have the defect rectified by a third party or, where such course of action is impossible, procure substitute supply from other sources. The contractor shall compensate the customer for damages resulting from defective performances and/or defective deliveries.
- 13.7. The place of performance for, and particular details pertaining to, defect rectification under warranty shall be determined at the customer's discretion.
- 13.8. All incidental expenses related to the rectification of defects (e.g. installation and removal, transport, disposal, travelling times, repeat inspection, certification etc.) shall be borne by the contractor.
- 13.9. The warranty period is 36 (thirty-six) months from commissioning by the end customer. Section 933b Austrian Civil Code will apply analogously if the customer has rendered performances under warranty to a business person.
- 13.10. If a notice of defect is submitted within the warranty period, the claimed defect shall be deemed to have existed at the time the performance was completed. Defects that occur within the warranty period may be claimed by seeking recourse to the courts within 2 (two) years from expiry of the warranty period. This is without prejudice to the customer's right to claims for defects outside of the statutes of limitations.
- 14. Liability**
- 14.1. The contractor shall be liable to the customer for all damages resulting from or in connection with the delivery and/or performance.
- 14.2. The contractor undertakes to provide the customer with all information required for the customer's efforts to defend against third-party claims, and to join potentially resulting legal proceedings as joint plaintiff.
- 14.3. The contractor shall indemnify the customer against third-party claims for damages brought against the customer due to a non-conforming product or defect attributable (at least in part) to the contractor.
- 14.4. The contractor undertakes to take out product and public liability insurance with cover that is adequate in terms of the order volume and the risks associated with the performance or delivery, and to furnish corresponding evidence at the customer's request. A failure by the contractor to furnish evidence, or the contractor's refusal to arrange for a reasonable increase of the insurance cover amount shall place the contractor in default; the contractor may in this case prohibit the contractor from rendering performances and/or making deliveries until presentation of a corresponding confirmation of insurance, rescind the contract, claim damages (e.g. for necessary remedial action), or alternatively take out the required insurance cover and claim the resultant costs from the contractor.
- 14.5. The contractor is liable for its performances and/or deliveries being unencumbered by third-party rights (particularly including property and liens), for the customer being granted unencumbered title in them, and for the performance and its use not infringing against property rights and intellectual property rights of third-parties in any country. The contractor shall in this respect indemnify the contractor and hold the contractor harmless.
- 14.6. The customer's statutory liability is limited to wilful intent and gross negligence.

15. Force Majeure

- 15.1. Force majeure means unforeseeable external events that cannot be averted by taking reasonable measures.
- 15.2. A Party prevented from rendering its contractual performances due to a force majeure event shall notify the other Party without undue delay and furnish corresponding evidence; such party's performance obligations shall then, to the extent the impediment caused by the event cannot be worked around, be suspended for the duration of the force majeure event. Neither the failure of upstream suppliers or freight forwarders to adhere to deadlines, nor the failure to produce a flawless workpiece shall constitute a force majeure event.

16. Intellectual property rights

The contractor shall grant the customer all intellectual property rights required for the appropriate, contractually agreed and unimpeded use of the performance and/or delivery.

17. Confidentiality

- 17.1. The contractor must treat all contractual documents and information, drawings, calculations and similar received from the customer or otherwise in connection with the preparation of quotations or the performance of the contract strictly confidential and only use them for purposes related to the performance of its contractual obligations. This does not apply to information and documents the contractor 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 absolutely necessary to fulfil the contract, the contractor shall impose the obligation to confidentiality on such third parties and assume liability for their compliance.
- 17.3. Each instance of infringing against the obligation to confidentiality shall render the contractor liable to pay the customer a contractual penalty in the amount of EUR 50,000.00. The customer is authorised to deduct this amount from the purchase price. The customer is further authorised to claim damages resulting from an infringement against the obligation to confidentiality.
- 17.4. The contractor shall accept liability for violations against the obligation to confidentiality by its employees and subcontractors and fully indemnify and hold harmless the customer in this respect.

18. Code of Conduct

The contractor acknowledges the Code of Conduct adopted by the customer and undertakes to adhere to the Code of Conduct during the rendering of its performances and/or when making deliveries.

19. Applicable law, place of jurisdiction

- 19.1. Austrian law applies. Application of the conflict-of-law rules and the UN law on the sale of goods (CISG) is excluded.
- 19.2. The place of jurisdiction is the court with local and material competence for the customer. The customer may also bring claims against the contractor at the court holding jurisdiction for the contractor's place of registered office.

20. Language

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

PMS Elektro- und Automationstechnik GmbH