

General Terms and Conditions of Works and Services
PRIRO Zerspanungstechnik GmbH & Co. KG and PRIRO Metallverarbeitung GmbH
- Version: 01/2018 -

1. General

1.1 No contract may be deemed to have been concluded with us excepting on the basis of these General Terms and Conditions of Works and Services (General Terms) to the exclusion of any other terms or conditions. This applies also in cases where works and deliveries are performed without any separate provision on our part.

1.2 These General Terms apply also to future contracts with the Customer, even where no specific reference is made by us to the applicability of our General Terms.

1.3 These General Terms only apply to business people in corresponding to Art. 14 BGB (German Civil Code).

2. Conclusion of Contract

2.1 We are entitled to accept offers resp. purchase or work orders within a period of three weeks from receipt (binding period).

2.2 We are entitled to accept offers resp. purchase orders or work orders by telefax, email, written form or implied by fulfilment.

2.3 Our information of measure, weight, material and fitting is an approximate value, unless we constitute the information as accurate value by telefax, email or in written form.

3. Prices

Our prices are net prices exclusive of freight, packaging costs and applicable value added tax, which the Customer shall be additionally liable to pay to us.

4. Payment

4.1 As far as different is not agreed upon our invoices become due 30 days counted starting from the invoice date and receipt of the goods resp. after work performance without any cash discount.

4.2 The Customer is not authorised to withhold payment or to set off counterclaims unless a right to do so has been determined with legal force or is undisputed or obvious. This limitation of rights of the Customer does not apply for claims of the Customer which result of the same contractual relationship out of which we claim payment.

5. Delivery and Work Performance, Default of Acceptance

5.1 Partial deliveries and partial work performance are admissible provided they do not constitute an unreasonable inconvenience to the Customer. Technical modifications are also admissible, provided they do not constitute price increases or a deterioration in quality.

5.2 Deliveries occur free carrier (FCA) Salzwedel (Incoterms 2010). Settling place is Salzwedel.

5.3 In case of default of acceptance or breach of obligation to cooperate or in case of delay for reason by fault of the Customer, we are entitled to claim for damages including additional expenses as storage cost, and cost of carriage. In all aforementioned cases risk passes over to the Customer at the time of breach of duty.

6. Delivery Period, Period of Work-Performance, Delay

6.1 An agreed-upon delivery period or period of work-performance begins with the receipt or shipment of order confirmation, but not before the provision of any necessary documents, in particular graph, approvals, releases, disposals by the Customer which have to be obtained before the arrival of the agreed advanced payment. The delivery period has been complied with, if before its expiration the goods are ready for dispatch and this has been notified, or the contractual goods have been handed over to the carrier.

6.2 In case of delay of payment we are entitled to withhold deliveries our work-performance being in default with delivery or work-performance. In these cases our right to refuse delivery or work-performance will remain unaffected just as the right to raise an objection of uncertainty (circumstances which place the credit-worthiness of the Customer in doubt excepting in cases where such circumstances were recognizable on conclusion of contract, German Civil Code, Art. 321) and other legal rights to refuse.

6.3 The agreed-upon delivery periods shall be reasonably extended in the event of disruptions for which we cannot be held accountable, such as: strikes, lockouts or delivery delays outside of our area of responsibility. In such cases, the Customer shall be entitled to withdraw from the contract, after granting a reasonable grace period. Any claims for damages are excluded. Should a disruption for which we are not responsible last for longer than eight weeks, we shall be released from our obligation to perform without any obligation to compensate the Customer.

6.4 In the case of delay on our part, provided the Customer is able to make evident of damage, we shall be deemed liable at most for 0,5 % of the net price for each completed week of delay, but not more than total of 5 % of the net price for the affected part of delivery or work-performance. The liability restriction shall not apply in cases of mandatory liability due to premeditation or gross negligence.

6.5 At our request, in case of delay on our part, the Customer is obliged to declare within a reasonable period whether he intends to withdraw from the contract or whether he insists upon delivery resp. work-performance.

7. Warranty, Notice of Defects, Limitation

7.1 No warranty cover shall be afforded for insignificant defects.

7.2 The Customer will examine the shipments immediately after receipt or, in case of deliveries FCA, hand-over to the carrier and has to provide written notice of any evident damage right away, but within fourteen days at the latest. Non-evident damage shall be reported in writing without delay upon discovery, but within seven days of discovery at the latest. The same applies to direct deliveries to third parties nominated by the Customer. The Customer has to ensure that complaints by third parties are made in good time. Warranty claims are excluded if the Customer does not provide notice of any damage in due time by telefax, e-mail or written form.

7.3 In the event of significant defects occurring within the warranty period (s. 7.5) and if the Customer has provided notice of these defects within the time as set forth in 7.2, we are entitled and obliged to make three attempts at repair or replacement within a reasonable period, provided the root cause of the defect existed at the time of risk transfer. The latter Customer has to furnish proof. Should the third remedy fail, the Customer may either withdraw from the contract or reduce the payment accordingly without prejudice to any claims for damages as outlined under section 8.

7.4 Insofar as the Customer provides raw material for machining or insofar as we purchase raw material according to the specifications of the Customer, no warranty cover shall be afforded for the applicability of the raw material for machining. We undertake no liability for any Customer provided materials being free from defects or fit for purpose. We will neither be liable for defects in workmanship to the extent that these defects only arise as a consequence of or in connection with Customer provided materials that are not fit for the intended purpose or otherwise defective. We will visually inspect Customer provided materials and promptly give notice to the customer of any identified shortage or defect in these materials as well as of any concerns in respect of the fitness for the intended purpose. Beyond such visual inspection we are not obliged to further examine these materials or to carry out any tests or inspections. In case we detect a defect of Customer provided materials when processing them or otherwise in the course of our works we remain entitled to payment for the works carried out so far. With regard to Customer provided materials we will only be liable for defects in workmanship as set out hereafter. If and to the extent that any defects in workmanship are due to negligence or wilful misconduct we will remedy the works at our cost in respect of the same piece(s) of Customer provided material – to the extent possible – or in respect of a new piece of Customer provided material. In case of defects caused by negligence we are liable in the amount of the maximum liability as per the relevant individual contract. If no such separate maximum liability is agreed upon under the individual contract our liability is limited to the maximum amount as set out in section 8.3.

7.5 Claims on the part of the Customer for expenses incurred in remedying a defect, in particular transport, travelling, labour and material costs shall be excluded in the event that the expenses incurred increase due to transfer of the delivered object to a location other than the Customer's place of business.

7.6 Claims to damages shall lapse in one year beginning of delivery or in case of deliveries FCA of handover to the carrier. This does not apply in cases of Art. 8.2 and in cases where longer periods are prescribed by the German Civil Code Art. 479 para. 1 (regress claims) or in cases of injury to life, body or limb, premeditated or grossly negligent breach of duty on our part, on part of our vicarious agents or of malicious failure to disclose a defect. This shall not affect statutory regulations relating to suspension of the period of limitations and recommencement of warranty periods.

8. Claim of Damages

8.1 Claims for damages and expenditure on the part of the Customer (compensation for damages) whatever their legal grounds, in particular due to the infringement of obligations arising from the contractual relationship or on the basis of tort are excluded.

8.2 The exclusion of liability in accordance with point 8.1 shall not apply in cases where our liability is mandatory, e.g. in accordance with product liability legislation, in case of premeditated action, gross negligence, injury to life, body or pertinent obligations. Contractual obligations are deemed pertinent, if compliance thereof makes the execution of the contract possible in the first place and if compliance can normally be expected by the Customer. In the case of infringement of such pertinent contractual obligations, however, our liability shall be limited to contractually typical foreseeable damages, except in cases where premeditation or gross negligence, injury to life, body or limb may be said to exist. A change in the burden of proof to the detriment of the Customer is in no way implied by these provisions.

8.3 The liability for contractually typical foreseeable damages as set forth in Art. 8.2 shall be limited to EUR 5 Mio.

8.4 Claims for damages due to material defects (s. Art. 7) shall lapse in accordance with Art. 7.6.

9. Free Cancellation by the Customer

In cases of cancellation of contracts for work resp. contracts for work-performance meaning legal cancellation without good cause ("Free Cancellation" as set forth in the German Civil Code Art. 648) the Customer owes payment for effected work-performance up to the cancellation and in addition a lump-sum payment of 15 % of the net partial amount out of the price agreed upon concerning the part of work-performance which is not yet fulfilled up to the cancellation without prejudice to our right to provide evidence of a higher claim.

10. Industrial Property Rights, Copyrights

10.1 We reserve title, industrial property rights, copyrights and other intellectual property rights to our service specifications, in particular graph, models and technical data. Without our consent the Customer is not allowed, to make these service specifications available to third parties, to disclose, to use or to copy them beyond our contract with the Customer.

10.2 At our sole demand and at any time the Customer has to hand over or to shred all of our service specifications, graphs and other documents, models including copies. This does not apply outside default and if the documents resp. models etc. are necessary to fulfil Customers contract.

11. Reservation of Title

11.1 The supplied goods shall remain our property until all our claims arising from the business relationship with the Customer have been met in full. The Customer is entitled to sell or process/integrate the goods (reserved goods) in the regular course of business. Only in the case of a deterioration in the financial circumstances of the Customer, we shall be entitled to prohibit the sale/processing or integration of reserved goods.

11.2 Resale by the Customer is permitted, provided the Customer (reseller) imposes the provision on the subsequent purchaser that title passes to the Customer's purchaser only after his payment obligations relating to the reserved goods have been met in full (simple reservation of title). By now the Customer cedes to us all

amounts due from resale of the reserved goods up to the amount of our claim.

11.3 The Customer is entitled to collect assigned claims. This entitlement shall lapse in the event of a default of payment or in case of a material deterioration in the financial circumstances of the Customer. In such cases, we are collect outstanding claims ourselves. The Customer is required to provide the necessary information for the assertion of assigned claims, and shall permit the review of this information. He shall, in particular, provide us on request with a precise list of claims owing to him with the names and addresses of Customers, the amount of the individual claims, date of invoice etc. and shall afford us entry to his premises to review this information.

11.4 If the reserved goods are joined, mixed or processed by the Customer to create a new movable item, this is done without any obligation arising for us. By joining, mixing or processing the reserved goods, the Customer shall not acquire title to the new item in accordance with Artt. 947 ff. of the German Civil Code. If reserved goods are joined, mixed or processed with items not belonging to us, we shall acquire co-title to the new item at a ratio proportionate to the invoice value represented by our reserved goods.

11.5 The Customer shall inform us without delay in the event of a discontinuation of payments, a material deterioration in his financial circumstances or the attachment of property. The names and addresses of attachment creditors shall be made known to us. The Customer shall bear all necessary costs, which are spent for abolition of measures of distraint by mortgages and for a replacement of the goods.

11.6 In the event of discontinuation of payments by the Customer, or a material deterioration of his financial circumstances, in particular when application is filed for the initiation of insolvency proceedings over his assets, we are entitled to demand surrender of the reserved goods. A demand for surrender constitutes a withdrawal from the contract. Under such circumstances, the granting of a period for performance may be dispensed with. In the case of withdrawal from the contract we reserve claims for damages.

11.7 The Customer shall hold the reserved goods in safekeeping on our behalf at no charge. He shall provide adequate insurance cover for the goods against customary risks such as fire, theft water and transport damage. He hereby assigns any claims to damages due to him as a result of damage from third parties to us to the full extent of the invoiced value of the goods.

12. Legal Venue, Applicable Law

12.1 The legal venue for all direct or indirect disputes arising from the contractual relationship shall be Salzwedel.

12.2 The contractual relationship is subject to substantive and procedural German Laws. Application of the United Nations Convention on Contracts for the International sale of Goods (CISG) and conflict of laws is excluded.