

# Terms and Conditions for Sale and Delivery (T&C)



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## Preamble

The following Terms and Conditions for Sale and Delivery (T&C) of PROMESS Gesellschaft für Produktionstechnisches Messen mbH are authoritative for all offers and order acceptances and for all deliveries, services and other performances. Services within the meaning of this T&C are, for example, service performance by PROMESS, in particular those at the premises of the ordering party.

## § 1 General

- (1) Our offers and descriptions, dimensions and illustrations are non-binding where nothing is agreed to the contrary. In particular we reserve the right to make modifications and improvements to the execution of the goods.
- (2) We only execute orders under these provisions, excluding any deviating delivery provisions of the ordering party.
- (3) The characteristics of the goods are only assured if they have been expressly agreed. This is valid in particular regarding the serviceability of the goods for certain purposes of the ordering party.
- (4) Agreements made orally or on the telephone and all agreements with our representatives and subsequent modifications and additions require written agreement or our written confirmation in order to be effective.

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## **§ 2 Prices and Payment Conditions**

- (1) Our prices are ex Works Berlin if nothing to the contrary has been expressly agreed. The ordering party will carry the costs for packaging, postage and other shipping costs and any other fees. Previous price information is not valid for modifications to the order data made mutually or requested by the ordering party.
- (2) Where nothing is agreed to the contrary payment is due within 30 days of invoicing without deductions. We are not obliged to accept bills of exchange.
- (3) Where partial deliveries are to be called up the date of notification of readiness for shipping is considered the day of delivery and invoicing. Partial deliveries will be charged immediately.
- (4) If the payment period is exceeded and if payment is delayed we will charge interest on arrears at 9 percentage points above the base rate in accordance with § 288 section 2 of the German Civil Code.
- (5) If payments are not made on time we reserve the right to refuse the performance that is incumbent upon us, to retain the goods to be delivered and to withdraw in whole or in part from the contract without notice.
- (6) If we become aware after agreeing the contract of circumstances that reduce the creditworthiness of the ordering party then we are entitled to modify the payment conditions retrospectively, to demand seizure or precautionary return of the delivered goods or to withdraw from the contract. We are also entitled to refuse the performance that is incumbent upon us if it becomes clear after agreement of the contract that our claim for compensation is at risk because of the lack of performance capability on the part of the ordering party. The right to refuse performance is not applicable if the compensation is paid or security is paid on it. Further details are covered in § 321 of the German Civil Code.
- (7) Offsetting or retention by the ordering party is excluded except if the counterclaims upon which it is based are undisputed or determined by a court. Any warranty claims do not give the ordering party a right of retention.

## **§ 3 Delivery Time and Delivery Deadlines**

- (1) Our delivery time information is approximate and non-binding. The obligation to maintain certain delivery deadlines only exists with a corresponding, explicitly, written agreement.
- (2) The beginning of the delivery time that we state assumes the clarification of all technical questions and the punctual and orderly fulfilment of the ordering party's obligations and cooperation obligations. Where import licences or other authorisation is required in the destination country the number, authorisation date and period of validity of these must be communicated to us by the ordering party when the order is awarded.

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- (3) We are entitled to deliver before the agreed time following consultation with the ordering party. Partial deliveries and partial performance are permitted to a reasonable extent. We are entitled to set a reasonable new delivery deadline if the agreed delivery deadline is not met.
- (4) Call orders must be accepted at the latest within 12 months of the order.
- (5) The delivery deadline is valid subject to correct and punctual delivery to us. The delivery deadline has been met if the readiness for shipping is communicated to the ordering party within the delivery deadline. The ordering party is obliged to accept the goods immediately at this communication. Any modifications that are requested by the ordering party within the delivery deadline to the execution of the delivery object interrupt and extend the delivery deadline accordingly.
- (6) If the ordering party is in default of acceptance or if he or she culpably violates other cooperation obligations then we are entitled to demand compensation for any damage we have incurred, including any additional expenses such as warehousing costs. We reserve the right to make further claims.
- (7) In the event of force majeure and other unforeseeable, extraordinary and non-culpable circumstances (for example delayed material deliveries, operational faults in our own operations or those of our suppliers) the delivery deadline is extended accordingly if we are prevented from fulfilling our obligation in good time. If the delivery or performance becomes impossible or intolerable then we are released from our performance and delivery obligations. If the deadline is extended for this reason or if we are released from our delivery obligation then the ordering party cannot derive any compensation claims from this.

## **§ 4 Shipping**

- (1) Delivery will be made ex Works Berlin. In the event of a shipment sale we will ensure the orderly and appropriate packaging if the type of goods cannot be transported without packaging.
- (2) The shipment will be carried out for the account and risk of the ordering party, even if freight-free delivery is agreed. The risk is transferred to the ordering party once the goods are ready, independently of whether the shipment is from the place of fulfilment and who is paying the freight costs. We are therefore not liable for losses and damage to the goods during transport. It is the responsibility of the recipient of the goods to report this kind of fault to the transport company (shipper, postal system or similar) within the prescribed deadline, even if this is only discovered when unpacking the shipment.
- (3) Complaints regarding the object, quantity and characteristics of the goods that are proven not to be traceable to transport damage and that also do not fall under the warranty obligation in § 6 must be reported to us immediately, at the latest within five working days of receipt of the goods.

## § 5 Retention of Title

- (1) The goods that we deliver remain our property until full payment of the purchase price and all other claims resulting from our business relationship with the ordering party.
- (2) In the event that the ordering party processes or treats the reserved goods this will always be carried out on our account without obligations arising from this for us. We are entitled to ownership of the new objects in their processed or treated state. If our reserved goods are processed, treated, combined, mixed or connected with other products that do not belong to us then we are entitled to joint ownership of the new object in the proportion of the invoice price of the reserved goods to the invoiced price of the other products.
- (3) The ordering party is not permitted to carrying out pledging, transfer by way of security or assignment of security for the goods that are still in our possession. If the ordering party disposes of the reserved goods that are still in our sole or joint possession in a normal business transaction then he or she assigns to us as of now and in advance all claims to which the party is entitled from the further disposal of the reserved goods or the product that is created through processing, treatment, combination, mixing or connecting. This is also valid if the products are disposed of at a total price together with products that we do not own. If a third party has acquired ownership or joint ownership rights to the products on the basis of a legal provision as the result of processing, treatment, combination, mixing or connection, then the ordering party also assigns the claims that he or she has on the third party to us as of now and in advance. Assignments within the meaning of this section are always carried out only up to the invoice price of the reserved goods. The ordering party is authorised to collect the assigned claims until revoked, which is permitted at any time. We hereby now accept the above assignments.
- (4) If the cooperation of the ordering party is required in order for the reservation of title to be effective, for example for registrations that are necessary in accordance with the country of the ordering party, then the ordering party is obliged to cooperate and to take the corresponding steps.
- (5) If the ordering party is in arrears with the payment then we can prohibit him from a command of the reserved goods, either fully or at our option also in part, e.g. only the disposal or further processing or similar.
- (6) If the ordering party has objective requirements for the obligation to apply for insolvency then the ordering party may not have command over the reserved goods in any way, without a requirement for a corresponding request. The ordering party is obliged to immediately report the stock of reserved goods. In this case we are entitled to withdraw from the contract and to demand surrender of the reserved goods. In the event of the processing, treatment, mixing, combination or connection with other products we are entitled to demand surrender to a trustee. In any case the ordering party is obliged to provide information on all joint owners of the reserved goods with the company, names, address and share of ownership. The ordering

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party must also communicate the names and addresses of all debtors and copies of the documents stating the claims against them.

## **§ 6 Warranty**

- (1) Claims from the ordering party for defects only apply if the ordering party has fulfilled his or her obligations concerning inspection and the reporting of complaints in accordance with § 377 of the Commercial Code. This means that, in accordance § 377 of the Commercial Code, obvious defects must be reported immediately and at the latest within five working days of receipt for the goods. If a defect that was not visible at the inspection becomes apparent later, then the report must be made immediately and at the latest within five working days of discovering the defect, otherwise the goods are considered authorised, even considering this defect.
- (2) If the goods display a defect despite all the care employed that already existed at the point of transfer of risk then we will, at our option, either rework or redeliver the goods, subject to notification of the defect within the deadline. The discovery of this kind of defect must also be communicated immediately. If the shipment or installation is delayed through no fault of our own then the liability expired at the latest 12 months after communication of readiness for shipping.
- (3) Defect claims do not apply in cases of natural wear and tear or of damage that is incurred after transfer of risk as a result of incorrect or negligent handling, excessive load, arbitrary structural changes, improper repairs, failure to follow the operating instructions, unsuitable operating materials or particular external influences such as acts of God or fire, frost, ingress of foreign particles, silted or soiled pipes, damage from impact, blows or other influences. If the ordering party or a third party undertakes improper repairs or modifications then defect claims are also excluded for these and for any consequences of the same.
- (4) Defect claims become time-barred 12 months after successful delivery of the goods that we supplied to the ordering party.
- (5) In warranty cases the ordering party will bear the costs for transport of the goods to us and any auxiliary costs that are incurred such as customs duty. We are responsible for the choice of the return shipper and the costs for the return shipment. The ordering party is responsible for any customs duties or other charges in the recipient country. If we determine that there is no valid warranty case then we reserve the right to charge the ordering party for the costs of return shipment and for the repair costs incurred.
- (6) A quality guarantee must always be included as such expressly in the offer and the written order confirmation, also in follow-up business. Please note in particular that keyword-type references to generally recognised norms, the use of trademarks and quality marks or the submission of samples or specimens do not in themselves establish a guarantee or assurance.

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## **§ 7 Liability**

- (1) Compensation claims of any kind against us and our legal representatives or agents are excluded. This exclusion from liability is not valid in cases of intent or gross negligence or the violation of an essential contractual duty. An essential contractual duty within this meaning is any duty, the fulfilment of which facilitates the orderly execution for the contract in the first place and observance of which the ordering party can generally rely on.
- (2) However the liability is limited to substitution of typically foreseeable damage except in cases of intent. The above liability limitations are not valid in cases of violation of life, limb or health.

## **§ 8 Software and validity of the EULA**

- (1) If the devices that are the subject of the contract are controlled by our software or if separate software licences have been sold by us then our software licence conditions (End User Licence Agreement, EULA) as well as the regulations of any contract signed by the customer for software support and/or maintenance are valid in accordance with these general terms and conditions for sale and delivery, whereby the two latter items take precedence in cases of doubt, where this relates to the use of the software.

## **§ 9 Secrecy**

- (1) The parties undertake to maintain confidentiality/secrecy.
- (2) Confidential information is all information and documents of the other contractual partner that is marked as confidential or that must be considered confidential based on the relevant circumstances. This is valid in particular for information on the operational procedures, business relationships, know-how, etc. of the other contractual party. This obligation excludes information of which the recipient was already aware when this contract was agreed or that he or she became aware of from a third party after the contract was agreed, without this violating a confidentiality agreement, statutory provisions or any official requirements. Confidential information that must be disclosed because of statutory obligations or by order of a court or an authority is also excluded. Where permissible and possible the recipient who is obliged to disclose will inform the other contractual party prior to disclosure and give that party the opportunity to counteract the disclosure. The parties undertake to only give those advisors access to the confidential information who are either subject to professional secrecy or who have signed up to the confidentiality obligation in this contract. The contractual parties will only disclose confidential information to those employees who need it in order to carry out their contractual obligations and only to the extent that the above employees must be aware of in order to execute this contract. They will obligate their employees to maintain

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confidentiality in the time following their departure from the company where this is permissible in labour law.

- (3) The parties agree to maintain silence regarding all confidential information.

## **§ 10 Court of jurisdiction, governing law and other provisions**

- (1) Amendments and additions to this agreement must be made in writing. This is also valid for the amendment or cancellation of the requirement for written form. Electronic documents in text form do not fulfil this form requirement.
- (2) All annexes to this agreement that are also named in it are a binding part of the contract. The law of the Federal Republic of Germany excluding the United Nations Convention on Contracts for the International Sale of Goods (CSIG) and international law (in particular the German Conflict of Laws legislation) is applicable to this contract.
- (3) The exclusive court of jurisdiction for all disputes arising from this agreement and its annexes is the headquarters of Licensor in Berlin where both contractual parties are merchants or legal persons of public law or if they have no general court of jurisdiction in Germany.
- (4) If individual provisions in this agreement are invalid then this will not affect the validity of the remaining provisions. In this event the contractual parties will strive to find an effective regulation to replace the ineffective regulation that corresponds most closely to the economic significance of the ineffective clause and that ensures the feasibility of the agreement in the spirit of what was intended by both sides. The same is valid in the event that the parties have failed to recognise a loophole at the time of signing this agreement or if such a loophole is recognised or occurs at a later time. The parties are then obliged to make a written addition to the contract in the spirit of the above objective.

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