

## **General Terms and Conditions and Client Information**

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### **1) Scope of Application**

These General Terms and Conditions of PMK Mess- und Kommunikationstechnik GmbH (hereinafter referred to as "Seller") shall apply to all contracts concluded between a consumer or a trader (hereinafter referred to as "Client") using means of distance communication (for example phone, fax, e-mail, letter) by way of exclusively individual communication in accordance with section 312 j (5), sentence 1 German Civil Code. The inclusion of the Client's own conditions is herewith objected to, unless otherwise agreed.

### **2) Conclusion of the Contract**

2.1 The Client may send a non-binding request to the Seller by phone, fax, e-mail, letter or via the online form displayed on the Seller's website regarding the submission of an offer. Following that request, the Seller will send a binding offer to the Client in text form (for example by e-mail, fax or letter) regarding the goods from the Seller's assortments of products previously selected by the Client.

2.2 The Client can accept this offer by a declaration of acceptance transmitted to the Seller by phone, fax, e-mail, letter or via the online form displayed on the Seller's website within 30 (thirty) days following the receipt of the offer. For the calculation of the time limit the day of the receipt of the order is not counted. If the last day of the deadline for accepting the offer falls on a Saturday or a Sunday or a public holiday at the Client's place of business, such day will be replaced by the following working day. If the Client does not accept the Seller's offer within the aforementioned time limit, the

Seller will not be bound by his offer and is entitled to freely dispose of the goods. The Seller will emphasize this point in his offer.

### **3) Prices and Payment Conditions**

3.1 All prices indicated by the seller are net prices plus the legal value-added tax. Costs for packaging, loading, freight, insurance (in particular transport insurance), duties and charges will be calculated separately.

3.2 In case of delivery to countries outside the European Union, additional costs may incur in individual cases for which the Seller is not responsible and which have to be borne by the Client. This includes for example transfer fees charged by banking institutes (transfer charges, exchange fees) or import duties or taxes (customs). Such costs regarding money transfer may also incur, if delivery is not made in a country outside the European Union and the Client carries out the payment from a country outside the European Union.

3.3 Payment can be made using one of the methods mentioned in the seller's online shop.

3.4 If prepayment has been agreed upon, payment shall be due immediately upon conclusion of the contract. If the payment method purchase on account is selected, the purchase price is due after the goods have been delivered and invoiced. In this case, the purchase price is payable within 30 (thirty) days from receipt of the invoice without deduction, unless otherwise agreed.

3.5 Payment shall be deemed to have been made if the equivalent value has been credited to one of the Seller's accounts. In the event of delayed payment the seller may demand default interest in the amount of ten percent above the relevant base interest rate. All other legal rights to which the seller is entitled in the event of delayed payment of the client remain unaffected. Provided that claims are overdue, payments received shall be offset first to possible costs and interests and subsequently to the oldest claim.

3.6 If unforeseeable cost increases should occur (such as currency fluctuations, unexpected rise in prices of suppliers), the Seller is entitled to pass on such price increases to the client. However, this only applies if delivery has been agreed to occur later than four months after conclusion of the contract.

### **4) Shipment and Delivery Conditions**

4.1 Goods are delivered on dispatch route and to the delivery address indicated by the Client, unless otherwise agreed upon. In the processing of the transaction, the delivery address indicated during the Seller's order processing shall be applicable.

4.2 The Seller is entitled to make partial deliveries, in so far as it seems reasonable for the Client. In the event of permissible partial deliveries, the Seller is entitled to issue partial invoices.

4.3 The Seller reserves the right to withdraw from the contract in the event of his own suppliers failing to deliver or if such delivery is incorrect. This only applies if the Seller is not liable for the non-delivery and if the Seller has concluded a congruent covering transaction with his supplier. The Seller shall make every reasonable effort in order to obtain the goods. In the case of the unavailability or the partial availability of the goods, the Client will be informed without delay and payments made by the Client will be immediately refunded.

4.4 The risk of accidental destruction and accidental deterioration of the goods shall be transferred to the Client upon delivery of the goods to an adequate forwarding company. The same applies as well if the Seller bears the costs of the transport. Transport insurance is provided only upon Client's instruction and at his own cost. If installation and assembly are owed by the Seller, the risk passes to the Client with the completion of those works and with the handing over to the Client.

4.5 Should delivery of goods to the Client be delayed for reasons for which he is responsible, the risk passes already with the notification of the readiness for dispatch. Possible storage costs incurred after risk has been transferred are borne by the client.

4.6 Personal collection is not possible for logistical reasons.

## **5) Force Majeure**

In cases of force majeure having an impact on the performance of the contract, the Seller is entitled to postpone the delivery for the duration of the hindrance and, in the event of longer-term impediment, to withdraw from the contract without giving rise to claims asserted against him by the Client. Force majeure shall mean any event which is unforeseeable for the Seller or any event, even if it would have been foreseeable, which is beyond the control of the Seller and the impact thereof on the performance of the contract could not be averted despite reasonable efforts used by the Seller. Possible legal claims of the Client remain unaffected.

## **6) Delay in performance**

6.1 In case of delay in performance, the Client is entitled to withdraw from the contract within the framework of the statutory provisions provided that the Seller bears the responsibility of delay.

6.2 In the event of default on the part of the Seller, the Client is obliged to give notice within a reasonable period of time, whether he wishes to withdraw from the contract or insists on the delivery being carried out.

6.3 If shipping is delayed at the request of the Client for more than one month after readiness for shipment has been notified, the Client will be charged for the storage costs to the amount of 0,5% of the goods to be delivered, for each additional month, but not more than 5% of the price in total.

6.4 The proof of a higher or a lower damage is expressly reserved to the parties.

6.5 The above liability limitations do not apply in the event of intent, malice aforethought, gross negligence and in the event of damages caused by injury to life, physical injury or injury to health.

## **7) Reservation of title**

7.1 The Seller reserves the ownership of the delivered goods until complete payment of the purchase price has been effected. In addition, the Seller reserves the ownership of the goods until all his claims arising from his business relationship with the Client are met.

7.2 In the case of processing of delivered goods, the Seller shall be considered the manufacturer and shall acquire ownership of the newly arising goods. If processing is done with other materials, the Seller acquires ownership in proportion of the invoice amount of his delivered goods to the value of the other used materials. In the case of combination or mixing of goods belonging to the Seller with

objects belonging to the Client, the article belonging to the Client is considered to be the main object. In this case, the Seller acquires the co-ownership of this new object in proportion of the purchase price of his goods or – in the absence of such a purchase price - of the current market value. In those cases the Client is considered to be the custodian.

7.3 Goods under reservation of title may neither be pledged nor transferred by way of security. The Client, in his capacity as a reseller, is only allowed to resell in the normal course of business on condition that the Client's claims against his customers arising from the resale will be assigned effectively to the Seller and the ownership of the goods will be transferred under the condition of payment. By concluding a contract, the Client assigns his claims against his customers arising from those sales to the Seller by way of security. The Seller accepts that assignment simultaneously.

7.4 The Client has to give notice to the Seller immediately, if he has access to goods belonging or co-belonging to the Seller or to claims assigned. He has to pay to the Seller any amounts assigned to the Seller he has collected, insofar as the Seller's claims are due.

7.5 In so far as the value of the Seller's security rights exceeds the amount of the secured claims by more than 10%, the Seller will release a corresponding part of his security rights at the Client's request.

## **8) Warranty Claims**

In cases of defects the legal provision will apply. Deviating hereof the following will apply for items which were used for a building in a manner contrary to common practice thereby causing a defect.

8.1 An insignificant defect does not cause warranty claims and does not entitle the Client to refuse delivery of the goods. Should part of the goods be defective in a significant manner, the Client is not entitled to refuse total delivery. This does not apply if partial delivery is of no interest to the Client. Furthermore, payments effected by the client may only be retained to an extent which is appropriately proportionate to the occurred defect. If the item is made available at no cost, the Seller's liability for defects is excluded except for cases involving intent and gross negligence.

8.2 Warranty claims do not arise in cases of natural wear and tear or in cases of damages after the passing of risk which are caused by incorrect or negligent treatment, excessive stress, and unsuitable operating equipment or caused by special external influences not covered by the contract, or caused by non-reproducible disturbances. If the Client or a third party undertakes modifications or maintenance works which are improper, no warranty claims can be made for the resulting damages, unless the Client can prove that the notified defect was not caused by those modifications or maintenance works.

8.3 Warranty claims are excluded in cases of used goods.

8.4 The limitation period for any claim arising from defects is one year calculated from the passing of risk. Subsequent performance (new delivery or remedying of a defect) shall affect exclusively the period of limitation for claims arising from defects which led to the subsequent performance.

8.5 The aforementioned limitations of liability and reduction of limitation pursuant to Section 8.1, 8.3 and 8.4 do not refer to cases related to the right of recourse (Section 445a German Civil Code) as well as to claims for damages and compensation of expenses the Client can make according to the relevant legal provisions related to defects. Section 9 will apply for the latter claims.

8.6 If the client is a business person, he has to comply with the commercial obligation to inspect and to give notice of defects pursuant to section 377 German Commercial Code. If the Client fails to comply with those obligations, the goods shall be deemed as approved, unless the defect was not recognizable during inspection.

8.7 In the case of subsequent performance, the Seller has the right to choose between rectification and replacement delivery.

8.8 In the case of replacement delivery, the Client is obliged to send back first the goods delivered within 30 days. The return parcel must contain the reason for return, the name of the Client and the number assigned to the purchase of the defective goods in order to enable the Seller to identify the returned goods. So long as and as far as the identification of the returned goods is not possible on grounds for which the Client is answerable, the Seller is not bound to accept returned goods and to refund the purchase price. The costs for resending the goods will be borne by the Client.

8.9 If the Seller delivers a defect-free item in order to comply with his duty of subsequent performance, he may claim compensation for use pursuant to section 346, para 1 German Civil Code. Further legal claims remain unaffected.

## **9) Liability**

Liability for being in default is exhaustively provided for by section 6. Furthermore, the Seller shall be liable for any claims arising from damages and compensation based on contract, quasi-contract and on legal provisions or on tort as follows.

9.1 The Seller is liable for every legal reason without limitation

- In cases of intent or gross negligence,
- in cases of negligent or willful physical injury or negligent or willful injury of life, body or health of a person,
- on the grounds of a warranty promise, unless otherwise agreed,
- on the grounds of compulsory statutory liability as defined for example in the product liability law.

9.2 If the Seller has violated essential contractual obligations through negligence, his liability is limited to foreseeable damage typical of the contract, unless unlimited liability applies pursuant to section 9, para 1. Essential contractual obligations are those obligations the contract imposes on the Seller which are material to the contract and whose fulfillment makes the due performance of the contract possible and on the performance of which the Client normally relies and is intended to rely.

9.3 Otherwise, the Seller's liability is excluded.

9.4 The aforementioned liability provisions will also apply in the case of the Seller's liability for his assistants and legal representative.

## **10) Statute of Limitation**

The Client's claims against the Seller - except those mentioned in Section 8 - expire by limitation no later than one year after the time of knowledge and at the latest five years after delivery of the performance, unless unlimited liability applies pursuant to Section 9, para 1.

## **11) Retention, assignments**

11.1 The right of retention and the right to retain performance are excluded, unless the Seller does not deny the underlying counterclaims or those claims have been recognized by declaratory judgment.

11.2 The assignment of claims by the Client arising from the contract with the Client, in particular the assignment of Client's warranty claims, are excluded.

## **12) Applicable Law and Jurisdiction**

12.1 The contract shall be governed by the laws of the Federal Republic of Germany excluding the laws regarding the international purchase of movable goods.

12.2 If the Client is a business person, a legal entity under public law or a special fund under public law, the place of jurisdiction for all disputes arising from this contract is the place where the Seller has his principle place of business. The same applies if the Client has no general place of jurisdiction in Germany or if his domicile or normal place of residence is not known at the time of the institution of legal proceedings. In any event regarding the aforementioned cases, the Seller is entitled to call the court responsible for the seat of the Client.