

International Terms and Conditions for the Sale of Goods and the Provision of Services of PRG Präzisions-Rührer GmbH

§ 1 Applicability of these International Terms and Conditions for the Sale of Goods and the Provision of Services

- (1) The terms and conditions set out in these International Terms and Conditions for the Sale of Goods and the Provision of Services shall form an integral part of the contract of sale and/or service ("Contract"). The subject matter of the Contract can be the sale of goods and/or the provision of services according to § 3 sec. 2 of these International Terms and Conditions for the Sale of Goods and the Provision of Services. These International Terms and Conditions for the Sale of Goods and the Provision of Services apply exclusively. The customer's terms and conditions which conflict or differ from these International Terms and Conditions for the Sale of Goods and the Provision of Services and/or from the legal provisions do not apply, even if we do not object to them or render performance or accept the customer's performance.
- (2) These Terms and Conditions for the Sale of Goods and the Provision of Services do not apply if the goods and/or services are supplied and/or provided for personal, family or household use and we knew or ought to have known at any time before or at conclusion of the Contract that the goods and/or services were supplied and/or provided for any such use. The customer declares that the goods or services respectively are not ordered for personal, family or household use.

§ 2 Formation of the Contract

- (1) A Contract always requires a written order of the customer.
- (2) We may accept the customer's written order with our order confirmation (hereinafter the "Order Confirmation") within ten (10) calendar days after receipt of the customer's order.

§ 3 Applicable Law

- (1) The Contract and these International Terms and Conditions for the Sale of Goods and the Provision of Services are governed by the United Nations Conventions of 11 April 1980 on Contracts for the International Sale of Goods (UN Sales Convention / CISG) in the English version and all legal questions beyond the scope of the CISG are governed by the Swiss law of obligations (Obligationenrecht). The CISG also applies to all agreements as to the jurisdiction of courts and arbitral tribunals.
- (2) The provisions of the CISG shall also apply to contracts between the customer and us in which the predominant part of our obligations consists in the supply of labour or services (collectively hereinafter referred to as "services"), e.g. repair and maintenance of agitators. As regards contracts for the provision of services, the provisions of the CISG therefore apply mutatis mutandis and are thus to be understood as referring to the provision of services (in the context of Art. 35 para. 1 CISG, this means, for example, that instead of the delivery of goods we have to provide services which are of the quantity, quality and description required by the Contract and which are contained or packaged in the manner required by the Contract). Also with regard to a Contract for the provision of services, all legal questions beyond the scope of the CISG (taking into account the afore-stated provisions) are governed by the Swiss law of obligations (Obligationenrecht).
- (3) Should commercial terms be used the Incoterms® 2020 of the International Chamber of Commerce apply taking into account the provisions stipulated in these International Terms and Conditions for the Sale of Goods and the Provision of Services.

§ 4 Specifications of the goods and/or services; Third party rights

- (1) The goods and/or services to be delivered have to conform to the specifications and quality requirements set out in the Order Confirmation. To the extent no specifications or quality requirements are stated in the Order Confirmation, the goods and/or services conform with the Contract if they are fit for the purpose which is usual in Germany and fit for the purpose for which goods and/or services of the same description are usually used for in Germany. Unless otherwise explicitly agreed to, the



- goods and/or services do not have to conform to any laws or regulations existing outside of Germany. Second-hand goods are delivered without any liability for their conformity.
- (2) Should the customer intend to use the goods and/or services in circumstances which are unusual or which could entail a particular risk to the safety and health of any person or to the environment, the customer has to inform us in writing about these intentions before concluding the Contract.
 - (3) Rights and claims of third parties (in particular rights and claims based on title or industrial property rights) only constitute a defect in title if these rights and/or claims are in force and registered in Germany and impede the use of the goods and/or services in Germany.

§ 5 Obligation to deliver; Passing of risk

- (1) We have to deliver the goods and/or services referred to in the Order Confirmation. A packaging is only included if this is provided in our Order Confirmation.
- (2) Unless otherwise explicitly agreed to, the delivery of goods and/or provided services has to be made FCA Incoterms® 2020 at the place of delivery indicated in the Order Confirmation, or – if no place of delivery is indicated in the Order Confirmation – FCA Incoterms® 2020 at our premises in Anton-Böhlen-Straße 13, 34414 Warburg/Germany. We are not obliged to inform the customer that the goods and/or provided services have been delivered or that the carrier or another person nominated by the customer has failed to take the goods and/or provided services within the time agreed.
- (3) Adherence to the delivery date respectively the delivery period stated in the Order Confirmation is not of the essence and non-adherence to the delivery date or the delivery period respectively does not constitute a fundamental breach of contract. If delivery periods are agreed to, we reserve the right to determine the exact delivery time within the delivery period.
- (4) All delivery dates and delivery periods are dependent upon the customer performing all of his obligations in due time. In particular, the customer has to procure or confirm any necessary permits, drawings etc. and make agreed payments in due time.
- (5) We are entitled to make partial deliveries of the goods and/or of the services and to invoice these separately.
- (6) The passing of risk takes place with delivery in accordance with § 5 sec. 2. Should the customer fail to take delivery, the risk passes at the time the customer fails to take delivery.
- (7) In addition to our statutory rights we are entitled to suspend the performance of our obligations if there are reasonable indications that the customer will not perform his obligations under the Contract, in particular not be able to pay the agreed price in due time.

§ 6 Delivery Note, Invoice and other documents

- (1) We will provide the customer with a delivery note issued according to our standard.
- (2) Irrespective of the Incoterms®-clause used, we are not obliged to clear the goods and/or provided services for export. We will however at the customer's risk and expense apply for any necessary export licences and formalities as regards customs provided that the customer has provided us with all necessary information.
- (3) We will provide the customer only with such documents explicitly stated on the Order Confirmation.

§ 7 Force Majeure

Any inability to supply as a result of force majeure or other unforeseen incidents outside our responsibility including, without limitation, strike, lock out, diseases, pandemics, acts of public authorities, subsequent cease of export or import opportunities shall, for their duration and in accordance with their impact, relieve us from the obligation to comply with any agreed delivery period and delivery time as well as any other obligation.

§ 8 Obligation to pay the price of the goods or services respectively

- (1) The customer is obliged to pay the agreed purchase for the goods or service respectively as well as all agreed additional costs (e.g. agreed costs for packaging) to the bank account nominated by us. The place of payment is 34414 Warburg/Germany. Banking fees accrued outside of Germany will be borne by the customer. The payment shall be made without any deductions and is due for payment on the date or within the time limit as stated on the Order Confirmation. A time limit for payment stated on the Order Confirmation shall be calculated from the date of invoice. In the absence of any payment dates or time limits stated on the Order Confirmation, payment shall be made within 30 (thirty) calendar days after date of invoice and the delivery of goods and/or services. The customer's acceptance of the goods is no precondition for the payment to become due.
- (2) The agreed prices shall exclude any statutory VAT applicable at the date of delivery.

- (3) The customer is only entitled to exercise a lien or to suspend his performance if this is based on the same transaction as well as based on a due and undisputed or finally adjudicated counterclaim of the customer.
- (4) The customer may only offset any claims insofar as the customer's counterclaim is acknowledged, undisputed or assessed in a legally binding judgement.
- (5) If and till such time the customer is in arrears with payment of the price, the customer is obliged to pay interest at the rate of nine (9) percentage points above the base rate of the European Central bank per annum.

§ 9 Non-Conforming goods or services; goods or services with a defect in title

- (1) The goods and/or provided services do not conform to the contract if at the time the risk passes they significantly deviate from the requirements set out in § 4 sec. 1 and sec. 2.
- (2) The goods and/or provided services are not free from rights or claims of third parties if at the time the risk passes they significantly deviate from the requirements set out in § 4 sec. 3.

§ 10 Duty of examination and notification

- (1) Without prejudice to the legal provisions, the customer is obliged to examine the goods or services respectively comprehensively in respect of deviations as regards type, quantity, quality and packaging. If necessary, the customer is obliged to conduct the examination with the help of external third parties.
- (2) Notice of non-conformity has to be made in within ten (10) calendar days. For very obvious non-conformities, the period for such notification starts with the delivery of the goods and or services, in all other cases after the customer has discovered the non-conformity or ought to have discovered it. Notice of non-conformity has to be given in writing. The notice of non-conformity has to clearly indicate and describe the non-conformity in such a way that we can take remedial actions.
- (3) Apart from the aforesaid as well as with respect to defects in title, the statutory provisions apply.

§ 11 Limitation Period

The customer's claims in respect of the delivery of non-conforming goods or services respectively as well as goods or services respectively with a defect in title become time-barred twenty-four (24) months after delivery of the goods or delivery of the services respectively. For second-hand goods § 4 sec. 1 sentence 4 applies. The delivery of substitute goods and/or services or the repair of delivered goods and/or services does not lead to a restart or suspension of the limitation period.

§ 12 Remedies in case of non-conforming goods and goods with a defect in title; Limitation of Liability

- (1) In case of delivery of non-conforming goods and/or services, the customer can claim delivery of substitute goods and/or services or declare avoidance of the Contract only in accordance with the legal provisions.
- (2) To the extent any costs associated with performing remedies are increased by the fact that the customer has removed the goods and/or services to a place not stated in the Order Confirmation or, in the absence of such an indication, to a place other than the customer's place of business, these costs will be borne by the customer.
- (3) **If we deliver non-conforming goods and/or services, goods and/or services with a defect in title or breach any other obligation resulting from the Contract or the business relationship with the customer, the customer is entitled to demand damages only in accordance with the following provisions and any recourse to concurrent bases of claim (in particular of a non-contractual nature) is excluded:**
 - a. **We are not liable for the conduct of our suppliers or subcontractors. Neither are we liable for damages to which the customer has contributed.**
 - b. **The customer has to prove that either our directors or employees or other members of staff have deliberately or negligently breached contractual obligations owed to the customer.**

- c. In case of liability, the amount of damages for late delivery is limited to 0,5 per cent for each full week of delay, up to a maximum of 5 per cent of the net price of the goods and/or services delivered late or not at all, and in case of remedies because of delivery of non-conforming goods or services and/or goods or services with a defect in title and in case of all other breaches of obligations is limited to the net price of the goods and/or services affected.
 - d. Irrespective of § 12 sec. 3 c., we are not liable for loss of profit, damages for interruption of production and loss of usage.
 - e. The aforesaid limitations in § 12 sec. 3 do not apply
 - i. to injury of life, body or health,
 - ii. if we have acted maliciously, grossly negligent or intentionally,
 - iii. if we are liable according to mandatory product liability laws, and
 - iv. to liabilities which may not be excluded or limited according to the applicable laws.
- (4) Apart from the aforesaid, the statutory provisions apply.

§ 13 Right to use Software; Rights in documents etc.

- (1) In case the goods include software, with the delivery of the goods the customer is hereby granted a non-exclusive, royalty-free license to use the software, but strictly and only in connection with the goods purchased under this Contract. With the exception of the right to make one backup copy, the customer is not entitled to copy the software.
- (2) We retain all intellectual property rights to all documents, pictures, drawings etc. (collectively “Documents”) which we have created and/or provided in connection with the performance of our obligations under the Contract. Such Documents shall belong exclusively to us.

§ 14 Other Provisions

- (1) Title of the goods that have been delivered remains with us until all of our claims against the customer have been settled. The customer is obliged to take all measures necessary for the protection of our property and ensure that our title is not prejudiced. If this is necessary for a valid reservation of our title, the customer in particular undertakes to arrange for any necessary entry in the public registers in the country of location of the goods at its own expense.
- (2) We are not obliged to perform any obligations not stated in the written Order Confirmation or in these International Terms and Conditions for the Sale of Goods and the Provision of Services.
- (3) There are no side agreements to the Contract .
- (4) Any amendments to a concluded Contract require our written confirmation, duly approved by signature.
- (5) The customer is not entitled to assign his rights and obligations against us to a third party.
- (6) The place of performance for delivery of the goods or services respectively is governed in § 5 sec. 2, the place of performance for the payment in § 8 sec.1. For all remaining obligations and irrespective of the agreement of a differing Incoterms®-clause, the place of performance is agreed to be Anton-Böhlen-Straße 13, 34414 Warburg/Germany, including for a replacement delivery, for the rectification of non-conformities and for the restitution of the contractual obligations in case of avoidance of the Contract.
- (7) All communications, declarations, notices etc. (hereinafter collectively “Notices”) are to be drawn up exclusively in German or English. Notices by means of fax or email fulfil the requirement of being in writing. A signature is not required, unless these International Terms and Conditions for the Sale of Goods and the Provision of Services explicitly require a signature.

§ 15 Agreement on jurisdiction and arbitration

- (1) If the customer’s place of business is located within the European Economic Area and/or within Switzerland, for all contractual and extra-contractual disputes, including disputes under insolvency law, arising out of or in connection with a Contract and/or these International Terms and Conditions for the Sale of Goods and the Provision of Services, including its validity, invalidity, violation or cancellation as well as other disputes arising out of the business relationship between the customer and us, the state court which has jurisdiction for 34414 Warburg/Germany shall have exclusive ju-

risdiction. Instead of bringing an action before the state court which has jurisdiction for 34414 Warburg/Germany, we are also entitled to bring an action before the state court of the customer's place of business.

- (2) If the customer's place of business is located outside of both the European Economic Area and Switzerland, all contractual and extra-contractual disputes, including disputes under insolvency law, arising out of or in connection with a Contract and/or these International Terms and Conditions for the Sale of Goods and the Provision of Services, including its validity, invalidity, violation or cancellation as well as other disputes arising out of the business relationship between the customer and us shall be finally settled in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date on which the Notice of Arbitration is submitted in accordance with these Rules. The place of the arbitration shall be Zurich/Switzerland, the language used in the arbitral proceedings shall be English.

§ 16 Severability

If provisions of these International Terms and Conditions for the Sale of Goods and the Provision of Services should be or become partly or wholly ineffective, the remaining provisions will continue to apply. We and the customer are bound to replace the ineffective provision with a legally valid provision as close as possible to the commercial meaning and purpose of the ineffective provision.