



PRÄZISIONSWERKSTÄTTEN

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## **General Terms and Conditions of Business of PRÄWEST PRÄZISIONSWERKSTÄTTEN Dr.-Ing. Heinz-Rudolf Jung GmbH & Co. KG**

### **I. Generally and scope**

1. These General Terms and Conditions of Business (hereinafter referred to as the Terms and Conditions) apply exclusively to all contracts that are made with our customers; our customer's Terms and Conditions of Business that differ from them or supplement them – even if we are aware of it – are not part of the contract unless we have expressly consented to their validity. Our Terms and Conditions will also apply whenever we make the delivery unreservedly while being aware that the customer's Terms and Conditions of Business conflict with our Terms and Conditions or differ from them.
2. Our Terms and Conditions also apply exclusively to all subsequent contracts that are made with the customer within the framework of the existing business relationship.

### **II. Quotation, conclusion of the contract and the quotation's supporting documents**

1. Our quotations are subject to change and they are given without engagement: they can be revoked by us at any time before the customer has accepted them in writing, unless we have expressly described our quotation as binding.
2. We reserve all rights of ownership and copyright to all of the illustrations, drawings, calculations and other supporting documents (hereinafter referred to as the "supporting documents"), even insofar as they have been drawn up according to information that we received from the customer.
3. We are allowed to differ from the supporting documents that are included in the contract within the framework of technical progress or the extent depending on the production which is reasonable for the customer, unless it has been expressly agreed with the customer that the supporting documents are binding. The right is also reserved to make technical alterations as well as to alter the shape, colour, material or weight, or both, within the framework of technical progress and what is reasonable for the customer.
4. The customer declares bindingly when he places the purchase order that he wants to acquire the delivery item. If the purchase order is not based on any quotation from us, then we will be entitled to accept the contractual offer that is stated in the customer's purchase order within two weeks after receiving it.

The acceptance can be declared either by a written acknowledgement of order or by beginning to deliver the delivery item to the customer. Our delivery note applies as the acknowledgement of order in the latter case.

5. The contract will be concluded subject to the reservation that our suppliers themselves make the deliveries correctly and promptly. This reservation only applies to the case that we are not responsible for the non-delivery; especially in the case that an identical hedging transaction has been concluded with our supplier. Refer to clause XI concerning this matter too. We will inform the customer immediately whenever the service is unavailable and we will reimburse him immediately with any quid-pro-quo payment that we have received for it already.
6. If there are misgivings about the customer's creditworthiness or if other misgivings arise after the contract has been concluded – especially whenever measures are taken for compulsory execution, or whenever insolvency proceedings are opened or if opening them is refused for the lack of assets – then we can make the contract's fulfilment dependent on a down-payment or security from the customer, or we can withdraw from the contract entirely or partially.
7. Any brochures, advertising documents or catalogues, as well as the information that they contain, will only become part of the delivery item's agreed quality if the customer and we have expressly agreed this.

### **III. Job-order production**

1. We will carry out the job-order production in our factory. The quantities of the work pieces (hereinafter referred to as "work pieces") that have to be machined and delivered to the customer will be checked for quantity or weight when they are received in our factory. The quantities and weights that are ascertained by us are decisive. If the quantities and weights of the delivered work pieces differ substantially (by more than 5% or less than 5%) from the contractual quantities and weights, then we will inform the customer about this fact and we will be entitled to recalculate the costs that are triggered by the extra or reduced quantities.
2. If the customer provides the work pieces that have to be machined, then the risk of accidental destruction or accidental deterioration of the work pieces will pass to us at the moment when the work pieces are delivered to our factory during normal working hours. The moment after which the work pieces have been unloaded from the means of transport (e.g., lorry) by the delivering freight carrier, haulier or transporting person will apply as the delivery.
3. Compliance with the agreed time limits for machining and delivery is subject to the reservation that the customer delivers the work pieces punctually and properly. If this

prerequisite is not fulfilled, then our time limits will be prolonged reasonably; this rule does not apply whenever we are responsible for the delay.

4. The customer is obligated to inform us immediately when concluding the contract, as well as during the course of the business relationship, about:
  - a) the countries to which the work pieces that are machined by us or the customer's final product shall be exported;
  - b) the circumstances that are known to the customer or become known to him which could justify rights directed against us because of the contract, especially the relevant foreign economic conditions and other laws in the customer's country of origin or in the countries to which the work pieces that are machined by us or the customer's final product shall be exported;
  - c) an intended purpose or use that influences the statutory limitation of rights in the case of defects, especially to utilize the products for a structure, e.g., a machine that is firmly connected to the ground.

#### **IV. Prices and terms and conditions of payment**

1. Our prices are understood to be net prices ex-works (EXW - Incoterms 2010), excluding incidental expenses like for example freight, packing and packaging as well as customs duties, insofar as we do not agree anything contrary with the customer. These incidental expenses will be charged separately, insofar as they are incurred. Turnover tax is not included in our prices; it will be indicated separately on the invoice at the rate which is valid when the invoice is presented, insofar as turnover tax is incurred.
2. The customer is obligated to pay the invoiced amounts into our bank account by means of a bank transfer without fees within 14 days after the invoicing date and without any discount, insofar as nothing else arises from the contract expressly. The decisive date is that on which the amount is credited to our bank account. The customer will fall into arrears with the payment after the time limit of 14 days has expired.
3. Cheques and bills of exchange or promissory notes will only be accepted for the sake of payment on account of an express agreement that has been made beforehand. The collection fees for the bills of exchange or promissory notes or cheques will be charged to the customer.
4. The customer can only set off his counterclaims if they have been established as legally binding or if they are undisputed. This rule applies to the same extent if the customer asserts any rights of retention or refusal of performance.

#### **V. Passage or risk and despatch; transport insurance**

1. The delivery is agreed to be ex-works (EXW - Incoterms 2010) insofar as nothing else arises from the contract expressly.
2. The risk of accidental destruction or accidental deterioration of the delivery item will pass to the customer when it is handed over to him, or in the case of sale to destination according to

the buyer's instructions when it is delivered to the forwarding agent, carrier or another person who is commissioned with carrying out the despatch. This rule also applies to partial deliveries and it is irrespective of whether a freight-free delivery is agreed. If the despatch is delayed at the customer's request or if the customer delays the acceptance or if he falls into arrears with the payment, then the risk applies as having passed to him on the date when the readiness to deliver was notified to him at the latest. The customer must bear the costs that are incurred by the delay (especially because of storage).

3. We will arrange a transport insurance policy for the delivery, insofar as the customer requests it. The customer will bear the incurred costs.

## **VI. Delivery, period of delivery, delayed acceptance and delayed delivery**

1. Partial deliveries are permissible, insofar as they are reasonable for the customer.
2. Compliance with our delivery obligation requires as a prerequisite that all technical questions have been clarified with the customer, as well as that the customer's obligations are fulfilled punctually and properly; especially the agreed payments and pledge of any agreed securities. We reserve the right to plead non-completion of contract (section 320 BGB – German Civil Code).
3. If the customer delays acceptance, we can demand compensation for incurred extra costs (e.g., storing costs). If the customer infringes other cooperative duties, then we can demand compensation for the damages (including extra expenditures) that have been incurred in this respect, unless the customer has not infringed the cooperative duty culpably. Further claims remain reserved, e.g. to compensatory damages whenever the customer falls into arrears with the payment simultaneously with the delayed acceptance.
4. Cases of force majeure (unforeseeable circumstances and events that we could not have avoided by taking the due care and diligence of a prudent businessman, e.g., industrial disputes with us or our suppliers, war, fire, transport hindrances, shortage of raw materials, official measures, natural events or lock-outs) will interrupt our delivery obligation for the time of their duration plus a reasonable start-up time and for the extent of their effect. That rule also applies whenever we have fallen into delay with the delivery already. We will inform the customer immediately about the onset of a case of force majeure and the hindrance's probable duration. We are entitled to withdraw from the contract entirely or partially due to the part that has not been completed yet, if it is unreasonable for us to continue with the contract on account of the force majeure's duration, even subject to considering the customer's interest.
5. If the hindrance lasts for longer than three months, then the customer will be entitled to withdraw from the part of the contract that has not been completed yet.
6. Our liability due to the delayed delivery is orientated to clause IX.

## **VII. Retention of ownership**

1. We reserve the right to ownership of newly created items and other delivery items (also condi-

tional commodities) during the job-order production until full payment has been made of the purchase price and all debt claims arising from the continuing business relationship with the customer. The retention of ownership will not be affected by suspending an individual debt claim in a continuing invoice nor by balancing the account; the retention refers to the recognized or actual balance in this case. The payment will only be deemed to have been made when the equivalent value has been received by us or credited to our bank account. The retention of ownership will not be revived for a delivery items if new debt claims arising from the business relationship are made against the customer after he has acquired the ownership of this delivery item.

2. In the case that the customer acts non-contractually, especially in the case of arrears or default with payment, we are entitled to withdraw from the contract and to recover the delivery item according to the legal provisions. The customer irrevocably permits us herewith to enter his business premises and his stores or warehouses unrestrictedly and to take possession of the goods for the purposes of recovering the goods. Our recovery of the delivery item always implies a withdrawal from the contract. We are authorized to reutilize or recycle the delivery item after recovering it. The proceeds from the reutilization or recycling must be set off against the customer's liabilities, less the costs of reutilization or recycling according to section 367 BGB (German Civil Code).
3. The customer is obligated to handle the delivery item carefully; in particular, he is obligated to adequately insure the delivery item at his own cost for the new value against fire, water and theft. The customer is obligated to implement the requisite work or maintenance, upkeep and repair at his own cost. He has to inform us in writing immediately about any accidents.
4. The customer has to notify us in writing immediately in the case of seizure or other third-party interventions, so that we can bring a lawsuit according to section 771 ZPO (German Code of Civil Procedure).
5. The customer is entitled to resell the conditional commodities during the proper course of business; this does not apply if it is agreed within the framework of sale that the customer's debt claims against third parties lapse because of the set-off. The customer assigns to us herewith all debt claims (including all balancing claims arising from a current account which occur even after a current-account relationship has ended) for the sake of security, of the value of our debt claim's finally invoiced amount (including turnover tax) which are vested in him because of the resale or another legal reason against his customer or a third party. The assignment is irrespective of whether the conditional commodity will be sold without processing or after processing. We accept the assignment. The customer also remains authorized to collect these debt claims after the assignment. Our authority to collect the debt claims ourselves remains unaffected thereof. We undertake not to collect the debt claims provided that the customer complies with his payment obligations, does not fall into arrears or does not suspend the payments. If that is the case however, then we can demand that the customer notifies the assigned debt claims and their debtors to us, that he gives us the information which is required for collection especially information about the debtor's address, that he

hands over the associated supporting documents and notifies the debtors about the assignment.

6. The entitlement according to clause VII. 5. does not include transferring or pledging the conditional commodities – or the articles that are manufactured from them – as security without our prior consent. Our prior written consent is required for making financing contracts (e.g., leasing) which include transferring our rights of retention, insofar as the contract does not obligate the financing institute to pay us directly the share of the purchase price that is vested in us.
7. The customer will always process or modify the conditional commodity for us, without creating any liabilities for us as a result. If the conditional commodity is processed with other objects that do not belong to us, then we will acquire co-ownership of the new article according to the ratio of the conditional commodity's value (the finally invoiced amount including turnover tax) with the other processed objects at the moment when they are processed. The same rules that apply to the conditional commodity also apply to the article which is created by means of the processing.
8. If the conditional commodity is combined with other objects that are not owned by us, then we will acquire the co-ownership of the new articles according to the ratio of the conditional commodity's value (finally invoiced amount including turnover tax) with the other combined objects at the moment when they are combined. If the combination takes place in such a way that the customer's article is regarded as the main article, then it will apply as agreed that the customer herewith assigns the proportionate co-ownership to us. We accept the assignment. The customer will safeguard our sole ownership or co-ownership for us.
9. The customer will bear all extra-judicial and judicial costs that must be incurred for annulling a seizure or another third-party intervention of the conditional commodity and for recovering the conditional commodity, insofar as they cannot be collected from the third party. If we are entitled to assert the debt claims that are assigned to us on account of clause VII., then the customer has to reimburse us with the extra-judicial and judicial costs that are required for this purpose.
10. We undertake to release the securities that are assigned to us in response to the customer's demand, as the realizable value of our securities which exceed the debt claims that have to be secured by more than 10%; the choice of the securities for release is vested in us.

### **VIII. Warranty in the case of contracts of sale for new delivery items and in the case of service work**

1. The customer's claims and rights because of defects (hereinafter referred to as "defects claims" too) require as a prerequisite that he properly complies with his obligations of inspection and complaints according to section 377 HGB (German Commercial Code).
2. No defects claims exist in the case of only slight divergence from the agreed quality or in the case that the usability is only slightly affected adversely.
3. Insofar as the delivery item has a defect, the right of choosing between remedying the defect or delivering a new faultless article regarding the remedy is vested in us according to section

439, paragraph 1 BGB (German Civil Code).

4. If the remedy fails, then the customer is entitled according to his choice to withdraw from the contract or demand a reduction of the purchase price. The customer's demand for compensatory damages instead of performance is excluded until the remedy fails, unless a demand for the remedy is unavoidable according to the law. The remedy applies as having failed if two attempts at eliminating the criticized defect do not lead to faultlessness of the delivery item, or if they are not carried out within a reasonable time limit that is set by us.
5. If we are to blame for the defect, then the customer can only claim for compensatory damages according to the supplementary prerequisites of clause IX.

#### **IX. Liability for damages**

1. Our liability for damages – irrespective of whatever reason, e.g., arising from impossibility, delayed delivery, infringement of duties in the case of contractual negotiations or impermissible action – is limited according to this clause IX.
2. We are unlimitedly liable – insofar as it is relevant according to the German Product Liability Law – in the case of deceitfully remaining silent about a defect, for damages arising from impaired life, physical injury or harmed health in the case of intent, or insofar as we have offered a guarantee. We are only limitedly liable for the damages that are foreseeable when the contract begins and that are contractually typical in the case of gross negligence.
3. We are also only limitedly liable for the damages that are foreseeable when the contract begins and that are contractually typical in the case of essential rights or duties arising from the contract's content and purpose being infringed only slightly.
4. We are not liable for damages that are caused by slight negligence, apart from those cases which are cited in clause IX. 2 and 3.
5. Insofar as we are excluded from the liability for damages, this also applies to the personal liability for damages of our workers, colleagues and representatives.

#### **X. Statutory period of limitations**

1. The warranty period is 1 year for defects in the delivery item. The statutory warranty periods according to section 438, paragraph 1, no. 2 BGB (German Civil Code) and section 634a, paragraph 1, no. 2 BGB (German Civil Code) remain unaffected.
2. The customer's other claims due to infringement of duty by us, especially claims for damages, or claims arising from a guarantee, are time-barred after one year. The customer's right to withdraw from the contract because we are responsible for an infringement of duty that is not based on a defect remains unaffected. Diverging from line 1, the statutory periods of limitation apply to the customer's following claims:
  - (a) according to the German Product Liability Law, as well as due to damages arising from impaired life, physical injury or harmed health, or infringed rights and duties arising from the contract;
  - (b) due to damages which are caused by a deliberate or grossly negligent

- infringement of duty by us or our subcontractors or agents;
- (c) due to deceitfully remaining silent about a defect;
  - (d) to reimbursement of cost according to section 478, paragraph 2 BGB (German Civil Code).
3. The statutory conditions about the beginning of the statutory period of limitations, suspension of the expiry, the stay and recommencement of the time limits remain unaffected.
  4. Our claims against the customer become time-barred according to the statutory regulations.

#### **XI. Exclusion of the right of withdrawal and the duty to make decisions**

The customer cannot withdraw from the contract if we prove that we are not responsible for the infringement of duty that justified the withdrawal but the statutory prerequisites apply in the case of defects. The customer has to declare – within a reasonable time limit and in response to our request – whether he will withdraw from the contract due to an infringement of duty or insist on the delivery, in the case that there are infringements of duty.

#### **XII. Procurement risk and guarantees**

We do not accept any procurement risk at all, nor do we offer any guarantees, unless we have made an express written agreement with the customer concerning this matter.

#### **XIII. Data protection**

We are entitled to process and store the data that is received from the customer in connection with the business connection – even if this comes from third parties – according to the conditions of the German Data Protection Law, or to arrange for the data to be processed and stored by the third parties who are commissioned by us.

#### **XIV. Place of jurisdiction, place of performance and applicable law**

1. Our head office is the exclusive place of jurisdiction for all disputes arising from the contract or in connection with it. This rule also applies if the customer is a legal entity under public law, or if he is a special asset under public law, or if he does not have any general place of jurisdiction in Germany, or if he moves his residence or usual place of abode abroad after the contract has been concluded, or if the residence or place of abode is unknown at the time when the lawsuit is brought. We also have the right to sue the customer at his general place of jurisdiction.
2. Insofar as we have not expressly agreed otherwise with the customer, our place of business or registered office is the place of performance for all of the services that have to be provided by us.
3. The laws of the Federal Republic of Germany, without its conflict laws, apply exclusively to the legal relationship between the customer and ourselves. The UN laws governing purchases (United Nations Agreement covering the international purchase of goods – CISG) are not applicable. The laws of the Federal Republic of Germany are also applicable for the interpretation of the contract.



## **XV. Final provisions**

1. If individual conditions of the contract are inoperative or invalid, or if they become so, then the contract's validity will not be affected otherwise. The inoperative or invalid condition will be replaced by a condition which approximates as closely as possible to the sense and purpose of the inoperative or invalid condition in a legally effective way. The aforementioned regulation applies in the case of any regulatory loopholes.
2. If individual clauses of these Terms and Conditions are inoperative or become so, then section 306, paragraphs 1 and 2 BGB (German Civil Code) will apply as a divergence from the aforementioned clauses.
3. The supplier is not allowed to assign any debt claims against us to third parties. Section 354a HGB (German Commercial Code) remains unaffected.
4. No action by us, except for an express written declaration of waiver, represents a waiver of a right that is vested in us or a claim that is vested in us. A delay in the case of care or safeguard does not apply as a waiver either. A non-recurring waiver does not apply as a waiver in the case of another matter.