

General Terms of Delivery and Payment - AGB für Lieferung, Leistung und Zahlung

I. Applicability - Geltungsbereich, Anwendbarkeit

1. The following general terms and conditions apply exclusively to all contracts with PCCell GmbH, Heusweiler - hereafter called PCCell. They have priority over opposing or different terms of the customer except PCCell accepts these customer terms explicitly in writing. It may not be assumed that PCCell accepts such opposing or different terms even if we execute an order from the customer without reservation in knowledge of them.
2. The same conditions apply to amendments, modifications or special agreements as well as all future transactions with the customer. The version valid on conclusion of contract shall apply in each case.
3. All further, subsidiary or deviating agreements must be in written form and are only binding for PCCell if they are confirmed in writing by PCCell.

II. Type and scope of performance - Art / Umfang der Leistungen

1. All PCCell proposals are subject to confirmation and non-committal. All orders are not binding until confirmed in writing or PCCell start work on execution of the order.
2. Regarding the contents of a contract, our written confirmation of the order or - if such confirmation does not exist - our proposal shall be binding, i.e. parts, accessories, work, services or ancillary work not specified in the confirmation of the order or proposal are not included in our scope of supply.
3. Details in the documents belonging to the proposal - such as drawings, illustrations as well as weight, dimensional and opening details, etc. - are only approximate if not explicitly stated as binding.
4. The proposal is submitted on the assumption that the media (water, air, etc.) used to operate the system is suitable for the intended purpose.
5. No ancillary work (e.g. on site testing, training, engineering in customer plant) is included in the proposal. If such work is performed by us, it is to be remunerated separately.
6. Installation work that needs to be performed or redone by us for reasons for which we are not responsible is to be remunerated separately.
7. Changes necessary at the request of the customer after our confirmation of the order or our proposal shall be charged separately.
8. Should unforeseen circumstances making additional work extending beyond the original scope of the order arise at the customer's, this additional work is to be remunerated by the customer if it was necessary to fulfil the contract and the customer did not reject our notification in this regard forthwith.

III. Prices and payments - Konditionen und Zahlung

1. The prices quoted in the proposal only apply if all parts are ordered.
2. For deliveries, work, training and services rendered later than three months after conclusion of contract, we may charge a reasonable overhead surcharge for wage and/or material prices increases that occur after submission of our proposal.
3. If not explicitly agreed otherwise, our prices are quoted in Euros ex works. Freight, duties and other necessary incidental expenses are to be borne by the customer. The respective valid rate of value added tax is invoiced additionally. The packaging is charged at cost; it is not taken back.
4. If changes of the product, deliveries, work or services due to changes in laws, standards, ordinances, necessary permits, etc. occurring after conclusion of contract are necessary, which include changed delivery times and delivery periods, the customer is to bear the costs incurred by us as a result of these alterations.
5. If not explicitly agreed otherwise, the following payment periods apply within the Federal Republic of Germany:
 - a) For pure delivery: within 30 days of receipt of invoice in cash without deductions.
 - b) For delivery with installation: within 8 days of receipt of invoice in cash without deductions.
 - c) In the case of orders with a value of more than EUR 25,000.00 reasonable advance payments are to be rendered by the customer on confirmation of the order and on notification of shipping. The amount of the advance payments shall be defined separately on conclusion of contract.
 - d) In the case of deliveries, work and services outside of Germany one-third of the agreed order sum is to be paid on conclusion of contract and two-thirds by bank guarantee from a firstclass European bank after notification of readiness for shipping if not explicitly agreed otherwise. Shipping shall not be effected before written confirmation from the bank of provision of the bank guarantee.
 - e) We are not obligated to accept bills of exchange. Cheques and bills of exchange are only deemed as payment on the day they are credited to our bank account. Costs shall be borne by the customer.
 - f) Should the customer be in arrears with payments, we shall charge interest on the arrears at the statutory rate.
 - g) The customer is only entitled to net or asset lines or rights to refuse performance if his counter-claims are undisputed or final in law. The assertion of a line further presupposes that the claims stem from the same contractual relationship.
 - h) Should we become aware after conclusion of contract of facts that raise doubts with regards to the capabilities of the customer and which therefore jeopardize our claims to performance, we are entitled to make further execution of the order contingent upon complete advance payment or corresponding provision of security or to withdraw from the contract after setting a reasonable period for complete advance payment or provision of security.

IV. Delivery periods - Force majeure Lieferfristen/Höhere Gewalt

1. The delivery period commences earliest with sending of the confirmation of the order, albeit not before the point in time at which clarification and agreement is reached between the customer and us on all technical details and contractual terms and not before receipt of the agreed down payment. Should the customer require subsequent changes, the delivery period shall be extended accordingly.
2. Performance of our delivery obligations presupposes the customer is not in arrears with his payments and performs all cooperative actions necessary for contractual delivery properly, correctly and punctually. In particular, he must at his expense furnish the necessary permits and documents for execution and operation of the system on time. Should we help him in this regard, the customer shall also bear our resultant costs.
3. The delivery period shall be deemed to have been met if the item of delivery has left our works or we have given notice of its readiness to be shipped before expiry thereof.
4. Should contractually agreed delivery periods be exceeded, we are to be granted a

period of grace of at least three weeks. If we are not able to perform delivery, because our subcontractors have not fulfilled their contractual obligations, we are entitled to withdraw from the contract if we have tried reasonably but in vain to procure the items of delivery.

5. If delivery has been delayed beyond the period of grace, the customer - if a case per paragraph 6 does not exist - is entitled to withdraw from the contract insofar, as he has explicitly stipulated in his granting of a period of grace, that he shall reject performance after expiry of the period of grace.
6. If we are prevented from delivery by force majeure, we shall be released from our performance obligation plus a reasonable period thereafter. This applies regardless of whether the corresponding circumstances occurred in our own works or at one of our subcontractors. Force majeure is equivalent to unforeseeable circumstances for which we are not responsible which complicate delivery for us unreasonably or temporarily make same impossible. Examples of this are industrial disputes, official actions, energy shortages and significant disruptions in operations. Should these impediments persist for more than three months, both parties are entitled to withdraw from that part of the contract not yet fulfilled. The customer does then not have any rights to claim compensation for damages.

V. Shipping and passage of risk - Versandrisiko

1. We are entitled to effect partial deliveries insofar as the customer allows this. Objections to partial deliveries do not exempt the customer from the obligation to accept the remainder of the ordered delivery per contract.
2. The risk passes to the customer on handover of the items of delivery to the carrier, even then if partial deliveries are effected or if we have assumed other services, e.g. shipping costs or delivery and erection.
3. If shipment is delayed for reasons for which we are not responsible, the risk passes to the customer already with notification of readiness to ship.
4. If shipment is delayed at the request of the customer or if the customer does not accept the delivery, we are entitled to store the items of delivery at the customer's risk and, commencing one day after notification of shipment, to charge the costs incurred by storage, and in the case of storage in our works at least 1/2% of the invoice sum for every month.
5. We are entitled, other rights notwithstanding, to dispose of the item of delivery otherwise and to supply the customer within a reasonably extended period if the delivery is not called within a reasonable period set by us.

VI. Installation - Inbetriebnahme

1. If not otherwise explicitly agreed, installation work is effected according to our current General Maintenance, Assembly, Customer Service and Repair conditions, which will be optional at extra cost
2. The customer must assume at his expense and provide punctually the following:
 - a) onsite installation, assessments and tests, training,
 - b) the items and materials necessary for installation
 - c) energy and water at the points of use including connections, heating, lighting, water retention, winter seals and heating.
 - d) at the installation site for storing of the machinery, parts, apparatus, materials, tools, etc. sufficiently large and suitable dry and lockable rooms on the construction site, customer take all measures he would to protect his own possessions.
 - e) connection and site preparation work as well as coordinated and approved planning documents as basis for execution.
 - f) expert reports, permits, acceptance certificates, maintenance and operator performances, taxes and charges.
3. Should we request acceptance of the deliveries after completion thereof, the customer shall undertake same within two weeks, even if a final adjustment has not yet been made. If this is not done, acceptance shall be deemed to have been effected. Acceptance shall also be deemed to have been effected if the deliveries, possibly after conclusion of an agreed test phase, have been taken into use.

VII. Retention of title Eigentumsvorbehalt

1. All deliveries and service are subject to a reservation of all proprietary rights. PCCell continues to own all the goods delivered until the full payment of the purchase price have been received or all cheques and drafts have been redeemed and all other demands have been settled in accordance with the agreement concluded between PCCell and the customer.
2. If reserved title is cancelled through processing, combination or mixing, we shall attain title/co-title to the resultant new item in the ratio of the value of our items to that of the new item. The customer shall safekeep the latter on our behalf. The customer further undertakes to assign claims or new co-title resulting from the demise of our goods subject to retention of title to us.
3. If the customer is in breach of contract, in particular if he does not observe the agreed payment dates, we are entitled after a reasonable period of grace to withdraw from the contract and the customer is obligated to surrender the items of delivery to us. Should the customer interfere with our aforementioned rights, he shall be obligated to compensate us for any resultant damages. Dismantling and other costs are to be borne by the customer.
4. The customer is entitled to process and sell the items delivered. The claims against third parties resulting from resale are herewith assigned to us without a special agreement being necessary from case to case.
5. As long as the customer fulfils his payment obligations to us he is authorised to collect the assigned claims in trust for our account. The proceeds are to be transferred to us forthwith. The customer authorises us already now to notify the third-party debtor of the assignment.
6. The customer may not pledge or convey as security the items subject to reservation of title to third parties, in particular financial institutes, without our written consent. The customer shall inform us immediately of any actions by third parties, especially through seizure, on the items subject to reservation of title or claims acquired through sale thereof. Resale while in insolvency is prohibited; our rights from § 48 of the Germany Insolvency Act shall remain intact.
7. All the items subject to reservation of title are to be insured against fire damage, water damage and theft. All claims in this regard against the insurer are herewith assigned to us.

VIII. Technical Advice, industrial and similar rights and assets, Software, limitation deployment Technische Beratung, Schutzrechte und Verwertung, Software, Nutzungsbeschränkung

1. Unless stipulated otherwise in writing, technical advice, consulting software programs and their documentation made available to the customer may only be used

to operate the previously designated devices named to us in writing and only for use of the customer. The customer acquires a non-exclusive, non-transferable right of use to the results of technical advice, software and technical descriptions. He may not duplicate or change the describes, programs or make same accessible to third parties without prior written consent. These provisions also apply to changed or supplemented programs. In the case of resale or transfer the customer shall impose the obligation from this provision on the transferee. In the case of software we undertake only to create and maintain it to the best of our knowledge and belief. In particular we provide no assurance regarding complete elimination of errors or usability for a specific purpose.

2. After the sales of products there is no license connected to a patent right.
3. PCCell does not take on any liability for the application or the sale of the products supplied under the present conditions which may violate the patent rights or patent claims of a third party, which protect the product or its use in connection with other products or during manufacturing processes.
4. The service demand results in no ownership demands for the patent right which may have possibly been acquired within the framework of this work. This means in detail that if it is possible to put a patent right of any kind on the results of the work within the framework of the consultation and if this is exclusively because of the work of a PCCell co-worker, then PCCell are entitled to do this. In this case PCCell does not grant an unlimited, non-exclusive and separate right to use the information. This can only be re-compensated transferably through an agreement between PCCell and the customer.

IX. Acceptance

Abnahme

1. If an acceptance inspection has been agreed or mandatory legal regulations provide for an acceptance inspection, it shall be conducted, if installation and/or assembly have not been agreed, exclusively in the supplying plant or in our store immediately after notification of readiness for acceptance inspection. The customer shall bear his personal acceptance inspection costs. The technical acceptance inspection costs will be charged to him by us according to the hourly rates of the supplying plant or the actual costs incurred.
2. If acceptance inspections are conducted at places other than those named in point IX.1 at the request of the customer and with our consent, the customer is to bear our additional resultant costs.
3. If the acceptance inspection is not conducted, not conducted punctually or not conducted completely through no fault of ours, we are entitled to ship the goods without acceptance inspection or to store same at the customer's expense and risk and to invoice him if non-acceptance is the customer's fault. The goods are then deemed as accepted.

X. Warranties - Gewährleistung, Funktions- und Prozessgarantie

1. The assertion of warranty rights presupposes that the customer has properly and correctly fulfilled his inspection and notification of defect obligations according to § 377 of the German Commercial Code.
2. We warrant that the ordered item is free of defects at the time of passing of risk. Characteristics of products described in offers, data sheets or in other place represent typical guide values. They are not warranty values and are subject to fluctuations, particularly in the case of experimental products. Principally no warranties are given for the characteristics of products, unless it is confirmed in writing by PCCell. PCCell does not issue a guarantee for the marketability or the ability of products to be used for any specially intended purposes, including those purposes which the customer could regard as being included.
3. We provide no warranty for normal wear and tear; further not for damage resulting from incorrect or negligent handling by the customer or from negligent failure to follow our operating and maintenance instructions, unsuitable supplies, deficient building work, force majeure or other reasons for which we are not responsible.
4. If the item of delivery needs to be installed, a warranty right for defects caused by installation errors only exists if the item was installed by us or technicians authorised by us.
5. We only assume a warranty on the mode of operation or capability on the condition that the prerequisites necessary to achieve same and which the customer has agreed by contract to fulfil have been fulfilled.
6. In the case of deliveries due to third-party specifications we warrant the deliveries, work, services and function of the individual units in the above-mentioned scope as required in the specification. We accept no liability for the correctness and reasonableness of such data in the sense of planning or total planning.
7. The customer may not derive any rights from minor defects. For the rest the customer may only demand supplementary performance and rectification or replacement delivery at our discretion. The customer must, after reaching agreement with us, grant us the necessary time and opportunity for this. Replaced parts become our property. The right to refuse supplementary performance under the conditions of § 439, paragraph 3 of the German Civil Code remains intact. Should rectification fail or supplementary performance be refused, the customer has the right at his discretion to reduce the purchase price or withdraw from the contract.
8. The limitation period for warranty claims is § 438, Abs. 2 of the German Civil Code remains intact. The limitation period commences in the case of pure deliveries on the day of delivery; in the case of deliveries with installation on the day of acceptance. Should a delay occur between delivery and installation work or should installation work be interrupted for no fault of ours, the limitation period shall commence on the contractually agreed date of completion of our delivery, work and services.
9. §§ 478 and 479 of the German Civil Code remain intact.
10. Claims for compensation for damages by the customer due to the defect are not affected by the above regulations. They are limited according to point XI.

XI. Claims for compensation for damages by the customer - Recht auf Wandlung, Rücktritt etc.

1. The customer has not right to claim compensation for damages in the case of minor negligence. In particular we are not liable for lost profits or other pecuniary losses incurred by the customer caused by minor negligence.
2. This exclusion of liability does not apply in the case of intent and gross negligence, if defects are concealed maliciously, for claims from a guarantee, in the case of injury to life, body or health, for claims according to the German Product Liability Act or in the case of breach of essential contractual duties. In the case of minor negligently breached contractual duties, however, our liability is restricted to compensation for the typical loss foreseeable on conclusion of contract. The same applies to grossly negligent actions by simple vicarious agents.
3. Generally, however, our liability is restricted to twice the net value of the order regardless of the degree of fault and resultant loss. If a contractual penalty was agreed for default and/or non-achievement of guaranteed values, our liability for the consequences of default and/or non-achievement of

guaranteed values is restricted to the one agreed contractual penalty.

4. Insofar as our liability is excluded or restricted, this also applies to the personal liability of our employees, other staff, representatives and vicarious agents.

XII. Exercising of the customer's rights

1. If the customer has named us a reasonable period for performance or supplementary performance according to §§ 281 and 323 of the German Civil Code and if this period has passed in vain, he shall inform us in writing within two weeks of a corresponding written demand whether he intends to claim compensation for damages instead of performance or intends to withdraw from the contract.
2. If he does not inform us of same on time, the rights from §§ 281 and 323 of the German Civil Code are ruled out.

XIII. Order documents - Secrecy Verschwiegenheit

1. Confidential information, which is handed over from one contracting party to the other one is clearly confidential.
2. The legal regulations for data security are to be observed.
3. The circulation of the information to a third party outside of the business field of the receiver is not allowed.
4. We reserve the ownership rights and copyrights to the proposal and all documents made available to the customer. They may only be used to process the contract concluded with the customer. They are to be returned of the customer's own accord after termination of the contract.
5. The customer is obligated to keep the proposal and other documents secret. The secrecy obligation endures after processing of the contract. It does not apply to knowledge that is in the public domain through no breach of contract by the supplier.

XIV. Partial nullity - Teilnichtigkeit Salvatorische Klausel

1. If a regulation in these trading conditions is or should be ineffective within the bounds of other agreements, the effectiveness of other regulations will not be effected by this.
2. Special verbal agreements are ineffective.
3. Ineffective conditions are supplemented and laid out as far as legally possible so that the originally intended purpose is reached as far as this is possible.

XV. Place of performance and jurisdiction - Erfüllungsort

1. The place of performance and jurisdiction is the place of business of the branch office that received the order.
2. This contract shall be governed and construed exclusively according to German law. The UN Convention on Contracts for the International Sale of Goods shall not apply.
3. The contract languages are German or English
4. The area of jurisdiction is the district court of Saarbrücken, Federal Republic of Germany

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