

## **General Terms and Conditions**

### **PERiT Dienstleistungssysteme GmbH, Blankenbach**

#### **I. Basis of the Contract**

1. All deliveries and services provided by PERiT Dienstleistungssysteme GmbH are subject to these Terms and Conditions as well as to any other special contractual agreements.
2. Our General Terms and Conditions ("GT&Cs") apply exclusively. Any General Terms and Conditions of the Client which vary from, conflict with, or supplement these General Terms and Conditions become a component of the Contract only if and to the extent that we have given express approval for their application. This requirement of approval is valid in all cases, for example even if we unconditionally perform services for the Client with knowledge of the Client's GT&Cs.
3. The following Terms and Conditions are only valid for companies in the sense of § 14 of the German Civil Code (BGB, Bürgerliches Gesetzbuch), legal entities subject to public law, and special assets under public law.

#### **II. Establishment of a Contract**

1. Our offers are always non-binding. Agreements become effective only with our written confirmation of the order. The Client's order is a binding offer. We are entitled to accept this offer within two weeks by sending an order confirmation or to perform the service ordered within this period.
2. No additional oral agreements exist.
3. The Contract is dependent on our receiving correct and timely supplies from our suppliers.

#### **III. Patterns, Illustrations, Cost Estimates**

We retain all rights of ownership and copyrights pertaining to documents given to the Client in connection with placement of the order, such as for example cost estimates, drawings, patterns, etc. These documents may not be made accessible to third parties unless we provide the Client with our express written consent thereto. If we do not accept the Client's offer within the period stated in Section II., these documents must be immediately surrendered to us.

#### **IV. Performance of the Contract**

We are authorised to provide the contractually agreed services through subcontractors, whether in whole or in part.

#### **V. Prices and Terms of Payment**

1. Only the terms of payment and prices stated in our order confirmation are binding (plus the statutory value added tax applicable at the time).
2. If a flat fee is not expressly agreed, our prices will be calculated according to the actual count of chargeable hours (including travel to and from the site), at our usual hourly rates (hourly billing rate). These prices do not include packing, shipping, transport, insurance, or customs duties. Our prices are subject to the statutory value added tax applicable at the time.

3. If the agreed performance of the service is delayed by more than four months for reasons for which we are not responsible, we have the right to demand a price adjustment if prices for materials, wages or auxiliary costs change in the meantime.

4. In addition to the hourly billing rates, we may make the following surcharges for work at night, on Sundays, overtime, work on bank and public holidays, shift work and time-delayed work demanded by the Client after establishment of the contract:

Overtime surcharge	35 %
Night surcharge (including overtime)	50 %
Sunday surcharge	70 %
Work on bank and public holidays	150 %
Shift work, time-delayed work	25 %

The above surcharges are calculated based on the average hourly rate according to the price list.

5. We have the right to demand an appropriate prepayment prior to performance of our services.

6. As long as no other terms are stated in our order confirmation, all payments are to be made on a strictly net cash basis with no deductions. Retention of payments due to counterclaims or offsetting of counterclaims is not permitted, unless this pertains to an undisputed counterclaim by the Client which is legally valid or ready for decision. For deficiencies in our services, the rights of the Client remain unaffected, particularly with respect to Section X. 6. Sentence 2 of these General Terms and Conditions.

#### **VI. Time of Performance/Delay**

Deadlines or times set by us are only binding if they have been expressly indicated as such. Our deadline for performance of services is set at the time of receipt of the order confirmation, but not before the Client provides the necessary documents, such as permits and verified statics, weight and dimension specifications, etc.

#### **VII. Transfer of Risk, Acceptance**

1. Risk is transferred to the Client when the product has left the place of manufacture, even if we have assumed responsibility for other services such as delivery and installation/mounting. We ship from the place of manufacture without insurance. If an acceptance must take place, this is decisive for the transfer of risk. Acceptance must be performed immediately at the scheduled time, or alternatively after our notification indicating readiness for acceptance. The Client may not refuse acceptance because of minor defects.

2. If dispatch, commencement, performance of installation or mounting, acceptance by the Client or test operations are delayed for reasons for which the Client is responsible, or if the Client delays acceptance for other reasons, the risk is transferred to the Client.

3. Partial deliveries/partial services are permitted as long as they are reasonable for the Client.

### **VIII. Duties of the Client**

As long as no other agreement has been made, the Client assumes the following duties to enable the performance of our planning, maintenance, mounting, repair, or logistics services.

The Client agrees:

a) to obtain in good time any permits which are necessary for performance of the order, and

b) to communicate to us any information which is necessary for performance of the contract, such as size, weight, anchorages and fixing points, and

c) at the site of installation to provide enough large, suitable, dry and lockable rooms for storage of machine parts, equipment, materials, tools, etc., and to provide suitable work and common rooms for the installation personnel, including sanitary facilities which are appropriate for the conditions; moreover the Client must implement the same measures for protection of our possessions and our installation personnel at its worksite which it would for its own possessions or personnel, also the Client agrees to provide notification regarding existing special safety requirements,

d) also to provide the necessary heating, lighting, power, water and connections including the necessary personnel required for performance of our maintenance, installation, repair, or adjustment work,

e) to likewise provide us, without the need for us to request it, necessary details of the location of concealed electricity, gas, and water lines or similar equipment, as well as the necessary static information.

f) to take care that prior to beginning our work, the necessary supplies and objects are on hand at the installation or mounting site, and all preparatory work has been completed prior to the beginning of construction to the extent that installation or mounting can begin as agreed and be performed without interruption, and that access routes and the installation or mounting site has been levelled and cleared.

Should the start or execution of our work be delayed by the Client having infringed one of his obligations as listed above, the Client will bear reasonable costs in respect of waiting time and any additional travelling costs necessarily incurred by our personnel.

### **IX. Retention of Ownership**

1. We retain ownership of products sold until the time of payment in full of all our present and future claims under the supply contract and/or an ongoing business relationship (secured debts).

2. The goods subject to retention of ownership may not be pledged to third parties nor used as security prior to payment in full of the secured debts. The Client must inform us immediately in writing if and to what extent third party seizures affect goods which belong to us.

3. In the event of Client conduct which is in breach of contract, particularly non-payment of the amount due for services, we have the right to withdraw from the contract in accordance with legal provisions, and / or to demand that the goods be surrendered under the retention of ownership. The demand for surrender does not simultaneously contain a declaration of withdrawal; we are moreover entitled to merely demand the surrender of the goods and reserve the right to withdrawal. If the Client does not pay the amount due, we may only enforce these rights if we have previously set an appropriate deadline for payment which was unsuccessful, or if a similar setting of a deadline is unnecessary according to law.

4. If delivery is intended for a business operation maintained by the Client, the item to be delivered may be resold and / or processed as part of proper business management. In this case, the following conditions shall also apply.

a. The retention of ownership extends to the full value of products brought into existence through processing, mixing or attaching the goods of which we are deemed to be the manufacturer. If a right to ownership by a third party exists due to processing, mixing or attaching with the third party's goods, we acquire co-ownership according to the invoice value of the processed, mixed or attached goods. Moreover, the same terms shall apply for the product created in this manner as for goods which are delivered under retention of ownership.

b. Any receivables from third parties arising from resale of the good or product, whether in their entirety or in the amount of any co-ownership share which we hold in accordance with the foregoing paragraph must be assigned to us as a security. We accept the assignment. The duties of the Client listed in paragraph 2 are valid even considering the assigned receivables.

c. The Client remains authorised to collect the receivable, along with us. We hereby undertake not to collect the receivable as long as the Client meets its payment obligations to us, does not default on payment, no application for the opening of insolvency proceedings is pending, and there is no other deficiency in the Client's performance capability. If this is the case, however, we may require that the Client disclose the assigned receivables and their debtors or customers, provide us with all information necessary for collection, hand over the associated documents, and notify the debtors or customers (third parties) of the assignment.

d. If the recoverable value of the securities exceeds 10 % of our receivables, we will release securities at the request of the Client at our own discretion.

## **X. Warranty for our Work and Materials Contracts**

1. For the Client's rights in the event of material or legal deficiencies (including incorrect delivery and under-delivery as well as improper installation or deficient installation instructions), the legal conditions of sales law apply, as long as no other conditions are stated below. In all cases, the special legal requirements for final delivery of the good to a consumer remain unaffected (supplier regress according to §§ 478, 479 BGB).

2. The basis for our liability for defects is, above all, the agreement reached regarding the nature of the goods. All product descriptions regarding the nature of the goods, which are the subject of the individual contracts, are considered to be agreements on the nature of the goods. No distinction is made in this context whether the product description originated with the Client, the manufacturer, or with us.

3. If the nature is not agreed upon, the determination of whether a defect exists or not must be according to legal regulations (§ 434 Section 1 Sentences 2 and 3 BGB). We assume however no liability for public statements by the manufacturer or other third parties (e.g. advertising statements).

4. The Client's claims for defects require that the Client has met its legal obligation to inspection and to provide notice of defects (§§ 377, 381 German Commercial Code [HGB, Handelsgesetzbuch]). If a defect becomes apparent during the inspection or at a later time, written notice of this is to be provided to us without delay. The notice is considered to be without delay if it has been provided within two weeks, and timely dispatch of the notice is sufficient for meeting this deadline. Independent of this obligation to inspection and to provide notice of defects, the Client must provide written notice of any obvious defects (including incorrect delivery and under-delivery) within two weeks of delivery, and also in this case timely dispatch of the notice is sufficient for meeting this deadline. If the Client neglects proper inspection and/or notice of defect, our liability for the defect (for which no notice was provided) is excluded.

5. If the delivered item is defective, we can first decide whether we will rectify the issue through correction of the defect (repair) or through supply of an item which is free of defects (replacement). Our right to refuse to rectify the issue, according to legal requirements, remains unaffected.

6. We have the right to make rectification of the issue dependent upon the Client paying any amounts due. The Client is, however, entitled to retain such a portion of the payment due as is appropriate for the defect.

7. The Client must give us the necessary time and opportunity for rectification of the defect and to hand over the goods in question for inspection purposes. In the event of replacement, the Client must return the defective item according to legal requirements. Rectification of the defect does not include disassembly of the defective item, nor a reinstallation, if we were not originally engaged to perform an installation.

8. Any expenses related to inspection and rectification, in particular transport, travel, labor, and material costs (not: disassembly and installation costs) shall be

borne by us if there is an actual defect. If, however, a request from the Client for rectification of a defect should prove to be unjustified, we can demand reimbursement from the Client of the associated expenses.

9. In urgent cases, such as for example in the event of risk to operational security or for the prevention of unreasonable damage, the Client has the right itself to remedy the defect and to demand from us reimbursement of related, objectively necessary expenses. In the event of such a remedy being carried out, we must be notified without delay and if possible in advance. The Customer's right to rectify defects shall not apply if we would have been entitled to refuse to carry out the relevant remedial work in accordance with legal provisions.

10. If rectification of the defect fails or if a reasonable deadline for rectification to be set by the Client passes without success or is unnecessary according to legal requirements, the Client may withdraw from the contract or demand a price reduction. For an insignificant defect, however, no right of withdrawal exists.

11. Claims by the Client for damages or compensation for wasted expenditure are only valid according to Section XII. and are otherwise prohibited.

## **XI. Warranty for our Work Contracts**

1. If the contractual relationship according to the legal conditions valid at the time of establishment of the contract is classifiable as a work contract, the legal requirements for work contracts shall apply with respect to the rights of the Client in the event of material or legal defects, §§ 631 et seq. BGB, as long as nothing else is specified below. Application of the regulations of the German construction contract procedures (VOB) - Part B [VOB/B] is expressly prohibited.

2. If the Client, in spite of knowledge of a defect, accepts the installation/work, the Client shall have warranty rights in the scope described below, if the Client claims these rights at the time of acceptance.

3. Sections X. 2. and 3. of these General Terms and Conditions are similarly valid, provided that the respective service description, which is the subject of a single contract, may be considered to be an agreement on the nature of the work. We only recognise a performance description from the Client if we have expressly confirmed this.

4. For remedy of defects subject to warranty, the Client will allow us a reasonable repair deadline. In this case, we are responsible for the decision regarding whether we remedy the defect or manufacture a new item. Section X. 5. Sentence 2 applies similarly.

5. Section X. 9. applies similarly, with the proviso that the Client's right itself to make rectifications is prohibited in all cases other than those urgent cases listed in that section.

6. Sections X. 10. and 11. apply similarly.

## **XII. Other Liability**

1. Unless otherwise provided by these GT&Cs including the following provisions, in the event of a breach of contractual and non-contractual duties, we are liable according to the applicable legal provisions.

2. We are liable for compensation for damages in the event of malicious intent and gross negligence. For simple negligence we are only liable:

a) for damages related to injury to life, the body, or health

b) for damages related to breach of a substantial contractual duty (obligation, whose fulfilment is only possible through proper performance of the contract and whose compliance the contractual partners can and do rely upon); in this case however, our liability is limited to compensation for foreseeable, typically occurring damages.

3. The limitations on liability in from Paragraph 2 do not apply if we fraudulently conceal a defect or have taken on a guarantee as to the nature of the goods. The same applies in respect of Client's claims pursuant to Product Liability legislation.

4. In the event of a breach of duty which is not related to a defect, the Client may only withdraw or cancel if we were responsible for the breach of duty. Apart from this, the legal requirements and consequences apply.

## **XIII. Limitation period on our contracts for work and materials**

1. Contrary to § 438 Sec. 1 No. 3 BGB, the general limitation period for claims for material and legal defects is one year after delivery. If an acceptance is agreed upon, the limitation period begins with acceptance.

2. If the goods, however, is a building or an item which has been used according to its typical use for a building, and if the goods or building has caused its deficiency (construction material), the limitation period according to legal regulations shall last for five years after supply (§ 438 Sec. 1 No. 2 BGB). Special legal regulations for material surrender claims of third parties (§ 438 Sec. 3 BGB), in the event that we have acted fraudulently (§ 438 Sec. 3 BGB) and for claims in supplier recourse at the time of final delivery to a consumer (§ 479 BGB) also remain unaffected.

3. The above limitation periods on purchaser rights also apply to contractual and non-contractual claims for damages by the Client, which are related to a defect in the goods, unless application of the usual legal limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period. The limitation periods according to the product liability law remain unaffected in all cases. Otherwise, for damages claims by the Client according to Section XII, solely the legal limitation periods shall apply.

## **XIV. Limitation period for our work contracts**

1. Contrary to § 634 a Sec. 1 BGB, the limitation period for claims arising from material and legal defects is one year after acceptance.

2. If the work pertains to a building or to work, whose success consists of performance of planning or monitoring services for it, the warranty period is five years after acceptance (§ 634 a Sec. 1 No. 2 BGB).

3. Section XIII. 3. Sent. 3 applies similarly.

**XV. Choice of Law and Court of Jurisdiction**

1. For these GT&Cs and all legal relationships between us and the Client, the law of the Federal Republic of Germany shall apply, with the exclusion of international uniform law, particularly the UN Convention on International Sales. Requirements and effects of the retention of ownership pursuant to Section IX are subject to the law of the respective location of the item, where the selection of applicable law in favour of German law is impermissible or unworkable.

2. The exclusive court of jurisdiction for all disputes arising directly or indirectly from this contractual relationship is Aschaffenburg. We are however also entitled to file proceedings in the general court of jurisdiction of the Client.

**XV. Severability clause**

If one of the aforementioned provisions is or becomes invalid, this does not affect the validity of the remaining provisions.