

GENERAL TERMS AND CONDITIONS

General:

Unless otherwise specified in the order, the following General Terms and Conditions shall govern all business relations involving purchases by PREMABERG Industrieanlagen Ges.m.b.H. (hereinafter "PIAG").

Except when expressly accepted in writing, no terms and conditions by the Contractor (hereinafter "Contractor") shall be binding even when no express objection is raised against them. PIAG's General Terms and Conditions shall be considered to be accepted at the latest when the order has been fulfilled by the Contractor. All correspondence referring to the order shall carry our order number. If no such number is stated, the communication shall, in case of doubt, be deemed not to have been received. In the event of discrepancies between any parts of the contract made between the Contractor and PIAG, the following priority ranking shall apply:

- the order letter (by letter, fax message or e-mail);
- the enclosures stated in the order letter, especially the negotiation protocol including the enclosures stated therein;
- these General Terms and Conditions.

If the priority ranking does not provide clarity, issues regarding the scope of performance shall be governed by the principle of the best possible fitness of the goods and services for the particular purpose. In the event of any ambiguity regarding the performance of the contract, the Contractor shall inform PIAG and seek a solution jointly with PIAG. The Contractor shall be obliged to notify PIAG immediately if such an event should occur.

Order:

Except when the Contractor objects to an order awarded by us, in writing and not later than eight days after the award, such order shall be deemed to have been accepted.

Price base:

The agreed prices shall be fixed prices excluding VAT, delivered to and unloaded at the place of performance, which shall include (except when expressly agreed otherwise), i.a., packaging and freight costs and all taxes (excluding VAT), customs and duties associated with the goods and services provided by the Contractor. Any addition or extension to the order and any order of spare and wear parts shall be governed by the terms applying to the main order.

Passing of risk/cash on delivery:

Any risk shall pass to us only upon delivery and acceptance of the goods at our premises or at the place of performance. Up to such time, the Contractor shall bear all risks. The place of performance shall be the place of receipt as identified in the order. Except when expressly ordered, the Contractor shall not be entitled to deliver by way of c.o.d. shipment. We shall be entitled to refuse acceptance of c.o.d. shipments and consider such as improper performance. The title shall be passed to PIAG at the same time as the risk.

Payment terms:

Payment shall be made subject to completion of the incoming inspection (ten days after delivery at the latest) and compliance with the requirements for payment as defined by PIAG within 30 days without any discount. Payment of the invoice shall not mean that the product or service is free of any defect and that we waive any claims under the legal or commercial warranty and for any damages.

Right of rescission:

If the Contractor commits a dereliction of duty and fails to remedy it within an adequate period of respite (normally two weeks), PIAG shall be entitled to rescind the contract in full or in part.

PIAG may also rescind the contract in full or in part, without granting a respite, in cases that include but are not limited to the following:

- the Contractor has in fact been given a reasonable respite after being reminded by PIAG without any express respite;
- PIAG has reason to assume even before the respective contractual milestone that the Contractor is not willing or not able to or will not be willing or able to meet material contractual obligations;
- one or more attempts to perform the contract have already failed;

- a change occurs in the Contractor's ownership situation (including indirect ownership); and/or
- the Contractor fails to meet the obligation to notify its credit standing as set out below.

Dereliction of duty as set out above shall include, i.a., defaulting or the risk of defaulting on intermediate or final milestone dates or a defective performance that endangers PIAG's performance vis-à-vis its own contractual partners, even when no penalty has been foreseen for such event.

Notwithstanding any rescission, PIAG shall be entitled, at the Contractor's cost, to deliver such goods and render such services which the Contractor has failed to deliver/render or has delivered/rendered inadequately either itself or to have them delivered/rendered by a third party. The costs and/or expenses thus incurred may either be directly invoiced by PIAG, subject to a payment period of 30 days upon the date of the invoice, or be deducted from PIAG's next payment to the Contractor.

In the event of a rescission, the Contractor shall pay back to PIAG any amounts already paid for goods and services not yet contractually delivered/rendered plus the financing cost accrued to PIAG. If exercising the right to deliver the goods or render the services itself or have them delivered/rendered by a third party requires PIAG to access equipment or materials located with the Contractor or the Contractor's subcontractor, the Contractor shall be obliged to hand them over to PIAG.

If exercising such right requires PIAG to have access to industrial property rights, documentations (such as workshop drawings, calculations) or other information, the Contractor shall be obliged to ensure that PIAG will be granted the requisite rights, documentations and information.

In the event of a rescission, PIAG or the end customer shall be entitled to the free use of the subject of the order until acceptance/handover of a substitute solution at the end customer.

Contractor's credit standing:

In the event that any bankruptcy or liquidation proceedings are threatened or instituted against the Contractor or its suppliers or any change in the Contractor's ownership conditions, PIAG shall be immediately and fully informed thereof. In the event that any bankruptcy or liquidation proceedings are instituted against the Contractor or any change in the Contractor's ownership conditions, PIAG shall be entitled to immediately have the disposition of the goods/services stored with the Contractor and/or its suppliers and/or promptly rescind the contract in whole or in part. This right shall be due to PIAG even when the contract has been fulfilled by either of the parties in whole or in part, for as long as the Contractor's legal/commercial warranty obligation is still valid.

Cancellation:

For as long as PIAG has not received a written order confirmation, PIAG shall be entitled at any time to cancel the order.

PIAG shall furthermore be entitled to rescind the contract at any time in whole or in part without any fault on the Contractor's part. In such a case, PIAG undertakes to pay to the Contractor the contractual price pro rata to the goods and services already handed over and to reimburse the Contractor for any substantiated direct costs for goods and services in progress and for the cancellation of subcontracts. Upon being notified of the rescission, the Contractor shall be obliged to make every effort to keep the costs to be reimbursed by PIAG as low as possible.

Suspension:

PIAG shall be entitled at any time to request that the Contractor suspend its performance of the contract. In such a case, the Contractor shall notify PIAG of the consequences of such suspension in detail and propose a change in the project schedule that will have the best economic



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consequences within the scope of the project. For a suspension of up to three months, the Contractor shall not submit any claims against PIAG. Once PIAG has ceased to suspend the contract, the Contractor shall immediately continue to perform the contract.

Subcontracting:

The Contractor undertakes to inform PIAG in good time of and to obtain PIAG's prior written approval of any subcontracting. Upon being so requested, the Contractor shall make available to PIAG a copy of the relevant order. If the Contractor fails to meet this obligation, the Contractor shall indemnify PIAG for any and all consequences resulting therefrom, including, without limitations:

- quality
- technical cross-standardisation
- scheduling risk
- counter trade interests
- subcontractor stipulations by the end customer
- customs stamp, customs transit, import and transport

In the event of any subcontracting not authorised by PIAG, PIAG shall be entitled, notwithstanding any further claims, to rescind the contract in whole or in part.

The Contractor shall not in any way be released from its obligations if PIAG gives its consent to a subcontract. Regardless of any subcontracting, the Contractor shall remain fully responsible vis-à-vis PIAG for performing the entire contract. The Contractor shall be liable for any action or omission on the part of its subcontractor(s) same as for its own actions and omissions.

Deliveries:

Except when otherwise agreed, deliveries shall be made to PREMABERG Industrieanlagen Ges.m.b.H., Siegfried Marcus-Straße 9, A-2362 Biedermansdorf. Deliveries in excess of the agreed quantities shall not be accepted, but shall be returned to the Contractor postage not prepaid. We reserve the right to accept deliveries below the agreed quantities. Where packaging is delivered postage not prepaid we reserve the right to return the packaging postage not prepaid.

Examinations:

It shall not be incumbent upon PIAG to check delivered goods and complain about any defects that may be found. However, the Contractor shall grant PIAG and its authorised bodies the right to examine, at any time, the activities associated with performance of the contract. This shall include the examination of design, manufacturing in terms of quality, and matching of the packing lists with the contents, dispatch checks, etc. For this purpose, the Contractor shall grant PIAG and its authorised bodies access to the requisite workshops and documentations at the Contractor's premises and those of its subcontractor(s), and the Contractor shall keep PIAG informed on the progress of the works and to promptly inform PIAG of any foreseeable delays.

Before the testing team carries out its technical inspection, the Contractor shall be obliged to carry out a full-scale test and to submit the detailed test results (test report, measuring protocols, etc.) for the final inspection and, upon being requested by PIAG, to participate in such final inspection. For performing the test, the Contractor, at its cost, shall provide auxiliary services, materials, workers, interpreters, energy, suitable testing equipment, testing means, skilled and unskilled workers, e.g. for restacking, opening/closing crates, etc. so that the testing can be carried out properly and effectively.

If PIAG should find the quality to be deficient or a delay in the time schedule, it shall be entitled to constantly monitor the Contractor's activities on the manufacturing site at the Contractor's expense until the deficiency has been remedied or the delay made good. PIAG shall inform the Contractor of such monitoring in good time. The Contractor undertakes to place the systems/system components, etc. so that they are easily accessible from all sides, secured against accidents and, unless otherwise agreed, unpainted and provisionally assembled. If PIAG carries out a test or waives its right to carry out tests this shall not release the Contractor of its obligations and neither shall it

constitute a waiver on the part of PIAG of any of its rights such as penalties, damages, claims under legal or commercial warranty, even when no relevant reservation is made. Any defects found in the course of the testing shall be promptly remedied by the Contractor at its own expense.

Warranty / Compensation:

The goods or services delivered shall have the warranted characteristics and shall comply with the state-of-the-art in technology, the appropriate standards and the applicable regulations issued by government authorities and trade associations, including, without limitation, with regard to safety. Unless agreed otherwise, the warranty period shall commence on the first day of commissioning and shall run for 24 months. Furthermore, it shall end 30 months at the latest calculated from the date of receipt of the complete shipment (or the receipt of the last part if shipped in instalments). Any defect with regard to which a complaint was filed during the warranty period, including the lack of warranted characteristics, shall, upon request, be remedied by the Contractor promptly and free of charge (including material and labour costs and including ancillary costs such as freight, packaging, etc.), at the place of installation to the extent required and indispensable for operational considerations (including all ancillary costs such as transfer, accommodation, expenses, etc.).

If the Contractor fails to remedy such defect within a reasonable period, PIAG shall be entitled to remedy it or have it remedied upon prior notification and at the Contractor's expense. In an urgent case, PIAG shall be entitled to remedy the defect itself without prior notification in order to ensure its uninterrupted operation and to charge the expenditure to the Contractor without affecting the warranty period. In the case of a written complaint, the warranty period shall be suspended until the defect has been remedied. If PIAG makes any claim under warranty, the burden of proof that the defect did not exist upon handing-over shall be on the Contractor for the entire warranty period. The seller shall also be liable for hidden defects, where the warranty period shall commence only when we have established full knowledge of the defect.

If any defect whatsoever occurs, we shall be entitled to retain the entire unpaid purchase price or compensation for the work until it has been fully remedied.

Assignment of labor force:

If the Contractor assigns personnel to HEAT, the Contractor shall be fully liable for all damages caused by his personnel to HEAT or third parties. The liability shall not be affected by the question of which of the parties selected the personnel.

Delivery period/default:

Any deadlines specified in the order shall be fixed dates; if it should be found that they may not be observed, we shall be promptly informed in writing. If a deadline is not observed, PIAG:-

- a) shall be entitled to damages for default, or
- b) may rescind the contract regardless of whether the timely performance is impossible due to a circumstance beyond the Contractor's control, and may claim damages for non-performance.

If the delivery period is exceeded and unless otherwise agreed in the order, a penalty of 0.2% of the contract sum shall be payable per calendar day up to a maximum of 5% of the contract sum. This penalty shall be in addition to a claim for compensation for any loss or damage, if any, accruing to PIAG.

Force majeure:

The Contractor shall be released in whole or in part of the timely performance of a contract if it is prevented from performance by force majeure. Instances of force majeure shall include solely fire, Acts of God, war and riots.

If prevented from performance by an instance of force majeure, the Contractor may plead force majeure only when it furnishes PIAG with a statement on the cause, the expected effect and duration of the delay immediately, but within at most 5 calendar days, stating the



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commencement and foreseeable termination of the impediment, by registered letter certified by the relevant government authority or chamber of trade of the country of delivery/performance. In the event of force majeure, the Contractor shall make every effort to eliminate or mitigate the problem and foreseeable damage and keep PIAG informed on an ongoing basis.

Any deadlines or milestone which cannot be met due to an instance of force majeure shall be extended by the duration of the effect of force majeure. In the event that an instance of force majeure should take more than four weeks, PIAG shall be entitled to rescind the contract in full or in part. PIAG shall not be liable to the Contractor for any consequences of an impaired performance caused by unforeseeable and non-avertable events.

Acceptance:

If an acceptance procedure (e.g. TÜV) is required for any goods, a certificate of acceptance shall be deemed an integral part of the delivery. Accordingly, an order shall be considered delivered only upon receipt of all certificates required, including but not limited to certificates for material or testing performed by the Contractor.

Maintenance and operating instructions:

The shipment shall include operating manuals, maintenance instructions and spare parts lists, all in the German language. These documentations shall be similarly deemed an integral part of the order, i.e., the payment period shall commence only upon their receipt.

CE mark:

If a CE mark and/or statement of conformity is required or permitted for a good or service, the Contractor undertakes to observe all applicable laws and to apply the CE mark to the equipment/system once it is ready for use and/or to furnish PIAG with the requisite statement of conformity in the language prescribed for the documentation and/or by law.

Intellectual property:

The Contractor shall be liable for any loss or damage suffered by PIAG from any infringement of third-party intellectual property rights in connection with the use, installation or resale of goods delivered by the Contractor to PIAG.

Any information and documentation, including, without limitations, designs, models and drawings, that have been handed over for the Contractor's use shall remain the material and intellectual property of PIAG and shall not be used for any other purpose nor disclosed to any third party. Upon completion of the enquiry or order, the Contractor shall return to PIAG, without being asked to do so and at its own cost, any such information and documentation, together with any copies or reproductions whatsoever which may have been made and for the making of which our prior express consent needs to be obtained. PIAG also reserves all rights to drawings made on the basis of data provided by PIAG.

Marking of shipments:

The order number shall be marked on all letters, freight papers, wagon papers, crates, packages, transit documents, delivery notes, invoices, etc. Partial deliveries shall be clearly marked as such. If the shipment is made through another company or a carrier, they shall be similarly required to mark the shipments with the order number.

Invoices/Intrastat data:

A single copy of the invoices shall be addressed to PREMABERG Industrieanlagen Ges.m.b.H., Siegfried Marcus-Straße 9, A-2362 Biedermannsdorf, Austria. Any invoices that do not show the order number shall not be processed. The last instalment of a payment shall be released only when the final account covering all goods and services provided as specified in the order and all associated claims has been presented to PIAG.

If the Contractor is domiciled in an EU Member State with the exception of Austria, it shall state in or enclose with its invoice the data required for Intrastat reporting. By presenting its final account, the Contractor confirms that it has asserted any and all of its claims from

the relevant business transaction and will not submit any further claims.

Assertion of claims by the Contractor:

Any claims on the part of the Contractor for payment beyond the total order sum, regardless of the legal ground, shall be asserted by the Contractor within 30 days of the event which, in the Contractor's opinion, entitles the Contractor to such claim, to be submitted to PIAG in writing and including detailed evidence and the specification of the exact amount of such claim, failing which such claims shall expire.

Third-party claims:

The Contractor shall indemnify and hold PIAG harmless for any and all third-party claims associated with any defects or non-contractual performance of its goods and services.

Assignment/pledge:

The Contractor's rights and duties shall not be assigned, pledge or otherwise transferred except with PIAG's prior written consent.

Change in performance:

The Contractor undertakes to inform PIAG of and offer it any improvement of the contractual object it may become aware of. No change shall, however, be made to the contractual object except on the basis of a follow-up order.

Liens/rights of retention:

Any acquisition of liens, rights of retention or other securities regarding parts provided by PIAG or its goods/services or parts thereof shall be excluded. The Contractor shall ensure that an appropriate clause to this effect shall be included in all its contracts with its subcontractors.

Standards, regulations, laws at the place of installation/ performance:

The Contractor undertakes to fully observe any and all laws, ordinances, provisions and regulations which may be or become applicable during the time of order performance.

To the extent that the Contractor has inadequate information with regard to the above provision, it shall obtain such information at its own expense and in good time. The Contractor shall furthermore warrant that it has familiarised itself with all essential circumstances affecting the provision of the goods/services and with PIAG's information and documentation before entering into the contract. Any loss or damage which may arise from the Contractor's failure to properly meet its obligations under this clause shall be borne by the Contractor.

The relevant standards, regulations and company standards of the final customer, if any, shall be applicable except as otherwise agreed in the terms and conditions specified in the order and/or the specifications and its enclosures.

Severability:

If any or more of the provisions of these General Terms and Conditions should be or become invalid, ineffective, illegal or unenforceable, this shall not affect the validity, effectiveness, legality or enforceability of all other provisions. In such event, the invalid, ineffective, illegal or unenforceable provision shall be replaced by a provision that is legal and that comes as closely as possible to the economic purpose of the original provision.

Governing law/jurisdiction

Any disputes arising from or in connection with the existence of a contractual relationship between the Contractor and PIAG shall, for the Contractor, be exclusively settled by the competent court in Vienna/Austria. PIAG, however, shall be entitled to bring a suit against the Contractor at any other court of its choice which may be competent under national or international law. Such disputes shall be exclusively governed by the substantive law of Austria. The conflict of law rules of private international law and the UN Sales Convention shall be expressly excluded.