

General Terms of Business

Section 1 Scope

1. The present General Terms of Business (hereinafter referred to as the Terms) shall constitute both the basis and an integral part of all contractual agreements which are concluded by and between PRG GmbH (hereinafter referred to respectively as PRG), on the one hand, and their contractual partners (hereinafter referred to as the Customer), on the other, and which concern the sale of items and/or associated materials and services by PRG.
2. These terms shall also govern all future transactions with the Customer. Individual agreements shall in all cases prevail over the General Terms of Business. The Customer's divergent terms of business, if any, shall be deemed invalid. Such terms of business shall only apply if explicitly confirmed by PRG in writing.

Section 2 Quotation and conclusion of contract

Quotations by PRG shall be without obligation. Orders shall be placed by the Customer in writing and shall remain binding for a period of two weeks as from receipt of the order. PRG shall be free to accept orders at its discretion.

Section 3 Prices

1. If the Customer is a consumer as defined by Section 13 of the German Civil Code (BGB), the purchase price shall include the statutory value-added tax. If the Customer is a business entity as defined by Section 14 of the German Civil Code (BGB), the statutory value-added tax shall not be included in the purchase price quoted.
2. In the case of sale to destination according to buyer's instructions, the purchase price shall apply plus the cost of freight, packaging and insurance.

Section 4 Delivery

1. Unless agreed otherwise, PRG shall decide upon the means of transport and route without being responsible for selecting the quickest and cheapest possibility.
2. PRG may deliver orders in parts which shall be payable separately. If payment of a part-quantity is delayed, PRG may suspend further delivery of the order.
3. Delivery dates and periods must be explicitly confirmed by PRG in writing and shall be agreed to be merely approximate. Delivery shall be deemed to be punctual if the goods have left PRG's warehouse or if they have been reported ready for delivery prior to expiry of the delivery date.
4. In the event of Acts of God, strikes, shortage of raw materials or operational disturbances, the delivery periods shall be extended accordingly. In such a case or if PRG's suppliers encounter circumstances leading to delayed performance and PRG is unable to procure the goods, PRG shall be entitled to withdraw from the contract. At the Customer's request, PRG shall declare whether PRG intends to exercise its right to withdraw from the contract or intends to deliver within a reasonable period of time to be agreed. The Customer shall in turn be entitled to withdraw from the contract after having set a reasonable period of grace of at least four weeks and this period has elapsed fruitlessly.
5. The Customer shall only be entitled to claim damages for exceeding the delivery period if PRG has been granted a period of grace of at least four weeks and the delivery period has been exceeded due to a wilful or grossly negligent violation of duty by PRG, its statutory representatives or executives. In addition, PRG shall also be liable for typical, foreseeable losses if they have been caused by gross negligence or wilful intent by a simple vicarious agent or by negligent violation of a substantial contractual duty by PRG, its statutory representatives or executives.

Section 5 Transfer of risk

1. If the Customer is a business entity as defined by Section 14 of the German Civil Code (BGB), the risk of accidental loss and accidental perishing of the goods shall pass to the Customer when the goods are handed over – in the case of sale to destination according to buyer's instructions, when the goods are delivered – to the haulage company, forwarder or other person or institution responsible for shipping the goods.
2. If the Customer is a consumer as defined by Section 13 of the German Civil Code (BGB), the risk of accidental loss and accidental perishing of the sold goods shall only pass to the Customer when the goods are handed over, also in the case of sale to destination according to buyer's instructions.
3. If acceptance is delayed by the Customer, this shall be deemed equivalent to handover.

Section 6 Terms of payment

1. Unless explicitly agreed otherwise in writing, PRG's invoices shall be payable free of charge within ten days of receiving the goods, without any deductions whatsoever. The Customer shall be in arrears if this deadline is exceeded. The timeliness of all payment shall be determined based on the time of receipt of the money by PRG.
2. If payment is not effected in good time, the Customer shall at least owe the statutory interest after the due date. We reserve the right to claim a further loss due to delayed performance.

3. The Customer shall only be entitled to exercise a retaining lien and to set off payment insofar as the counterclaim is undisputed or has been unappealably established by a court of law. The Customer shall be entitled without restriction to exercise a retaining lien resulting from the contractual relationship hereunder.

Section 7 Reservation of title

1. In the case of contracts concluded with consumers as defined by Section 13 of the German Civil Code (BGB), PRG shall retain ownership of the goods until the purchase price has been paid in full. In the case of contracts concluded with business entities as defined by Section 14 of the German Civil Code (BGB), PRG shall retain ownership of the goods until all outstanding claims associated with a business relationship have been paid in full.
2. The Customer shall be obliged to treat the goods with care. Any maintenance and inspection work required shall be carried out by the Customer at regular intervals and at the Customer's expense.
3. The Customer shall be obliged to inform PRG without delay of any third-party action against the goods, for instance if attachment is ordered, as well as to report any damage to or destruction of the goods. The Customer shall immediately inform PRG in writing of any change in possession of the goods or change of domicile.
4. PRG shall be entitled to withdraw from the contract and demand the return of the goods in the event of any breach of contract by the Customer, especially if the Customer defaults on payment or violates a duty pursuant to paragraphs 2 and 3 of this Section.
5. If the Customer is a business entity, he shall be entitled to resell the goods in the ordinary course of business. The Customer herewith assigns to PRG all sums receivable from a third party as a result of reselling the goods, up to the value of the sum invoiced. PRG herewith accepts the assignment. Following such assignment, the Customer shall be authorized to collect the sums outstanding. However, PRG reserves the right to collect the sums directly if the Customer does not discharge his payment obligations correctly and defaults on his payments.
6. Processing of the goods by the Customer shall in all cases be undertaken on behalf and by order of PRG. If the goods are processed together with items not belonging to PRG, PRG shall acquire part-ownership of the new product in accordance with the value of the goods delivered by PRG in relation to that of the other items. The same shall also apply if the goods are mixed with other items not belonging to PRG.

Section 8 Warranty

1. If the Customer is a consumer as defined by Section 13 of the German Civil Code (BGB), the statutory regulations shall apply with the proviso that liability for defects shall become statute-barred after one year, or after two years in the case of new manufactured products. Claims for damages for defects in used products shall be statute-barred after one year.
2. The sale of used objects to a business entity as defined by Section 14 of the German Civil Code (BGB) shall exclude all liability for defects by PRG. Section 444 (exclusion of liability) shall remain unaffected.
3. If the Customer is a business entity as defined by Section 14 of the German Civil Code (BGB), PRG shall perform as follows under warranty for defects in new objects:
 - (a) The performance under warranty shall initially comprise either repair or delivery of a replacement, exclusively at the discretion of PRG.
 - (b) If the subsequent performance fails, the Customer may demand either a reduction in price or rescission of the contract, at his discretion. However, the right of rescission shall not apply in the case of a merely minor non-conformity with the contract and particularly in the case of minor defects.
 - (c) A business Customer must report the defect in writing within seven days of receiving the goods, otherwise warranty claims shall be excluded. This shall not apply if the defect was not evident. If a defect is found later, it must similarly be reported in writing within seven days. Defects shall be deemed to have been reported in good time if notice is sent before expiry of the deadline. The business Customer shall bear the full burden of proof for all requirements underlying a claim, particularly the defect itself, the time at which the defect was discovered and for proving that the defect was reported in good time.
 - (d) The warranty period equals one year as from delivery of the goods.
 - (e) In the case of business entities as defined by Section 14 of the German Civil Code (BGB), it is agreed that the nature of the goods shall only be defined by the manufacturer's product description. Public statements, announcements and advertisements by the manufacturer shall not constitute any contractual description of the nature of the goods.

Section 9 Damages

1. The Customer shall only be entitled to assert contractual and statutory claims for damages if they are based on a wilful or grossly negligent violation of duty by PRG, its statutory representatives or executives. Strict liability in accordance

General Terms of Business

with Section 536, paragraph 1, of the German Civil Code (BGB) shall be excluded. In addition, PRG shall also be liable for typical, foreseeable losses if they have been caused by gross negligence or wilful intent by a simple vicarious agent or by negligent violation of a substantial contractual duty by PRG, its statutory representatives or executive employees. These limitations of liability shall also apply to the benefit of PRG's statutory representatives and executives.

2. The above limitations of liability shall not affect the Customer's rights under product liability law. Moreover, the limitations of liability shall not apply in the case of losses attributable to PRG and due to the loss of life, bodily injury or damage to health.

Section 10 Written form

Insofar as written form has been agreed or prescribed by the present Terms, this requirement shall also be met by facsimile transmission (fax) and by electronic documents bearing a qualified electronic signature in accordance with the German law on signatures.

Section 11 Concluding provisions

1. bsidiary verbal agreements have not been reached.
2. If any of the provisions in the contractual agreement, including these Terms, prove to be invalid or have not been validly incorporated into the contract, this shall not affect the validity of the remainder or of the contract itself. The parties undertake to agree instead on a valid ruling most closely fulfilling their economic intention.
3. The present Terms and all legal relations between PRG and the Customer shall be governed by the laws of the Federal Republic of Germany excluding the United Nations Convention on the International Sale of Goods (CISG). German shall be the language for negotiations and contractual agreements. The present English text is merely a convenience translation.
4. Place of performance shall be at PRG's head office.
5. Insofar as the requirements pursuant to Section 38 of the Code of Civil Procedure (ZPO) are met, jurisdiction shall be at PRG's business headquarters, also for action relating to deeds and the payment of cheques. This jurisdiction shall also apply if the Customer does not have any general jurisdiction in Germany, moves his domicile or ordinary place of residence to a foreign country after concluding the contract or if his domicile or ordinary place of residence is unknown at the time of filing suit.