

## General Terms and Conditions of PROAUT TECHNOLOGY GmbH for Machines, Facilities, Lasers and Laser Systems

### I. General Provisions

#### 1. Scope of Application

1.1 The following General Terms and Conditions (Terms and Conditions) of **PROAUT TECHNOLOGY GmbH** (hereinafter referred to as "**PA**") shall apply exclusively. They shall also apply to all future business transactions with the customer. This shall also apply even if the Terms and Conditions are not expressly agreed upon again.

1.2 Terms and conditions of the customer that are contrary to or deviate from the Terms and Conditions of PA shall not be deemed accepted unless PA expressly consents to their validity in writing. The Terms and Conditions of PA shall also apply if PA performs the delivery or the services vis-à-vis the customer without reservation in full awareness of contradictory or deviating terms and conditions of the customer.

1.3 The contracts concluded between PA and the customer contain any and all written agreements on the deliveries. Any and all future agreements concluded between PA and the customer shall be stipulated in writing in the relevant contract and any supplementary contracts.

1.4 These Terms and Conditions only apply vis-à-vis entrepreneurs pursuant to Sec. 14 para. 1 of the German Civil Code (*Bürgerliches Gesetzbuch, BGB*) and legal entities under public law as well as special funds under public law within the meaning of Sec. 310 para. 1 BGB. An entrepreneur within this meaning means a natural or legal person or a partnership with legal personality who or which, when entering into a legal transaction, acts in exercise of his or its trade, business or profession.

#### 2. Conclusion of Contract

2.1 In the event an order of a customer qualifies as an offer pursuant to Sec. 145 BGB, PA can accept this offer within two weeks from receiving such offer by sending an order confirmation.

2.2 Cost estimates of PA are – unless agreed otherwise – subject to change and not binding. A specific offer provided by PA is only binding for two weeks or for the period indicated in the offer.

2.3 A contract between PA and the customer only becomes effective – subject to a deviating agreement – with the written order confirmation of PA. The submission of an invoice shall equal an order confirmation.

2.4 The documents submitted and information provided by PA, such as drawings, plans, weights and measurements, shall only be binding insofar as PA expressly lists them in the order confirmation as an integral part of the contract and/or refers to them in the order confirmation.

#### 3. Remuneration, Due Date, Default in Payment, Set-off, Right of Retention, Assignment

3.1 The prices agreed upon in the offer shall apply. They are exclusive of packaging and shipment (ex works) unless otherwise indicated in the offer.

3.2 Costs of packaging and loading as well as the costs of taking back the packaging will be charged separately. The same shall apply to shipment costs if the customer requests a shipment. Unless otherwise agreed, it shall be at the discretion of PA to choose the mode of shipping and the routing.

3.3 In case of partial deliveries or services pursuant to clause 4.2, PA is entitled to receive respective partial payments.

3.4 PA reserves the right to amend the prices accordingly if cost increases occur between the conclusion of the contract and the delivery for which PA is not responsible, in particular, newly charged fees, additional charges, significant increases in material or production costs, including increases in freight costs including customs, import and export fees as well as cost increases as a result of exchange rate fluctuations.

3.5 Statutory VAT is not included in the prices of PA. The respectively applicable statutory VAT amount shall be stated separately in the invoice. In case of deliveries and services within the European Union, the customer shall provide its VAT

identification number in due time prior to the agreed delivery date as proof of tax exemption. In the event of failure to provide PA with complete information in due time, PA reserves the right to charge applicable VAT. In case of deliveries and services outside the European Union, PA is entitled to charge statutory VAT retrospectively if the customer does not send to PA an export proof within one month after the respective dispatch.

3.6 Unless stipulated otherwise in the respective contract or by law, payment shall be due immediately upon delivery or performance. The customer shall automatically be in default after 30 days from the due date and receipt of the invoice without a reminder being required.

3.7 If the customer is in default with its payment obligation, PA is entitled to charge default interest in the amount of nine percentage points p.a. above the basic interest rate. The right to assert further damage shall remain unaffected. In all other respects, the statutory provisions shall apply.

3.8 If PA becomes aware of circumstances which threaten to reduce the creditworthiness of the customer, any and all claims arising out of the business relationship with the customer will become due immediately.

3.9 The customer is only entitled to a set-off or retention if its counterclaim has been established with final legal effect, is uncontested or has been acknowledged by PA. The assignment of existing claims against PA to any third parties is subject to the prior written consent of PA.

#### 4. Terms of Delivery, Transport Insurance, Passing of Risk

4.1 Unless otherwise stipulated in the order confirmation, the parties agree upon a delivery or performance ex works.

4.2 PA is entitled to partial deliveries and services, as long as these are reasonable for the customer.

4.3 The risk shall pass to the customer when the subject-matter of the contract is handed over to the person carrying out the transport. This shall also apply to a transport conducted by PA.

4.4 If the transport or collection of the subject-matter of the contract by the customer is delayed at its request or due to its own fault, PA will store the goods at the expense and risk of the customer. In such case, the risk shall pass to the customer as of the day of notification of readiness for dispatch or acceptance.

4.5 PA and the company performing the transport must be notified in writing of any transport damage immediately, but no later than five days from delivery.

4.6 Transport packaging and other packaging in accordance with the German Regulation on Packaging (*Verpackungsverordnung, VerpackV*) will not be taken back. The customer shall be responsible for the disposal of packaging material at its own expense.

#### 5. Period of Delivery and Performance, Default, Passing of Risk in Case of Default in Acceptance

5.1 Delivery and performance periods indicated by PA shall be non-binding unless PA expressly confirms the exact date of delivery or performance in writing.

5.2 Periods of delivery and performance shall be deemed complied with if, before their expiry, the subject-matter of the contract has left the premises or there was a notification that the subject-matter of the contract is ready for collection. If the performance is rendered on the customer's premises, performance periods are complied with upon rendering of the performance.

5.3 The periods of delivery or performance shall not commence before all commercial and technical queries existing between the parties have been clarified and presupposes the timely and proper fulfilment of the customer's obligations. Compliance with the periods of delivery and performance shall be subject to correct and timely delivery from suppliers. PA does not assume any liability for delays which PA is not responsible for. PA shall immediately report any foreseeable delays.

5.4 The fulfilment of the contract by PA with respect to such delivery parts which are governed by national export regulations shall be subject to the granting of the required approvals.

**5.5** If PA is in default and if the customer consequently incurs a damage, liability shall be subject to clause 7.

**5.6** If the customer is in default of acceptance or violates other duties to cooperate, PA is entitled to exercise the existing statutory rights, in particular to claim reimbursement of the additional expenses incurred as a result thereof and to withdraw from the contract after setting and expiry of an appropriate deadline. Moreover, PA reserves the right to otherwise dispose of the subject-matter of the contract after setting and expiry of an appropriate deadline for the acceptance of the delivery or performance and to make deliveries or performances to the customer within a reasonably prolonged deadline.

**5.7** If the customer is in default of acceptance, the risk of accidental loss or deterioration of the subject-matter of the contract passes to the customer at the point in time the latter begins to be in default of acceptance.

## 6. Warranty for Material Defects

**6.1** The agreed quality pursuant to the functional specification is the basis of our liability for defects. Furthermore, the limitations of the systems as regards content in relation to the operating hours which the customer was informed of apply.

**6.2** In case of defects, the warranty shall be restricted to the right of subsequent performance unless stipulated otherwise in clause 6.6. In such case, PA shall, at its choice, be entitled to the removal of defects or a replacement delivery or substitute performance. The customer's right to remedy the defect itself shall be excluded.

**6.3** The customer shall stipulate in writing a deadline for the subsequent performance of at least four weeks. Subsequent performance shall only be deemed failed after three attempts remained unsuccessful. PA may refuse subsequent performance if the same is only possible at disproportionate costs.

**6.4** Return deliveries of defective goods to PA for the purpose of subsequent performance may only be effected upon the written consent of PA. The risk of accidental loss and accidental deterioration shall not pass to PA until the goods are handed over to PA at its place of business. The expenses required for the purpose of inspection and subsequent performance, in particular costs of transport and material (not: costs of assembly and disassembly) shall be borne by PA if a defect actually exists. If, however, a request by the customer to remedy a defect proves unwarranted, PA may claim from the customer compensation for the costs incurred in this context.

**6.5** In case of replacement deliveries for the purpose of subsequent performance, the customer shall return the delivered item.

**6.6** In the event that PA is not willing or able to fulfil subsequent performance, particularly if the same is delayed beyond reasonable periods for reasons for which PA is responsible or if the subsequent performance fails for other reasons, the customer is entitled to withdraw from the contract in accordance with the statutory provisions. This shall not apply to insignificant defects. Such an insignificant defect is given if the effort to remove the defect does not exceed an amount of 5% of the order value. In such case, the customer shall only be entitled to reduce the contractual price. Claims for damages shall be subject to clause 7.

**6.7** In the event of changes to the subject-matter of the contract which the customer carries out or has carried out by third parties without the prior consent of PA, the warranty shall lapse unless the customer proves that there is no causal relationship between the change and the defect. The same shall apply to defects resulting from a specification of the customer.

**6.8** Furthermore, there shall be no warranty claims for defects which occurred due to inappropriate or incorrect use, faulty commissioning, usual wear and tear, faulty or negligent treatment, excessive use and improper maintenance of the subject-matter of the contract as well as due to changes to the subject-matter of the contract by the customer or on its behalf by third parties without the express consent of PA.

## 7. Liability

**7.1** PA shall be liable without limitation for intent and gross negligence. With regard to slight negligence, the liability of PA shall be limited and restricted to the foreseeable damage that might typically occur under the contract if an obligation is violated, the fulfilment of which is essential for the proper performance of the

contract and on the compliance with which the customer may regularly rely (cardinal duty).

**7.2** PA shall be liable for cases of initial impossibility only if it had knowledge of the hindrance to performance or if its lack of knowledge is due to gross negligence.

**7.3** The foregoing liability limitations or exclusions shall not apply to claims resulting from fraudulent concealment of a defect, acceptance of a guarantee and claims pursuant to the German Product Liability Act (*Produkthaftungsgesetz, ProdHaftG*) and to damage arising from injuries to life, body or health.

**7.4** Insofar as the liability of PA is excluded or limited, such exclusion or limitation shall also apply to the personal liability of its employees, representatives and vicarious agents.

## 8. Limitation of Claims

**8.1** Claims for defects and liabilities of the customer become statute-barred after twelve months after shipment.

**8.2** The statutory limitation periods shall apply to claims which are based on injuries to life, body or health, grossly negligent or intentional behaviour, the culpable violation of cardinal duties within the meaning of clause 7.1, the breach of guarantees and to claims under the ProdHaftG.

**8.3** The beginning of the statutory limitation shall be subject to the statutory provisions.

**8.4** Any restart of the period of limitation after a subsequent performance principally only relates to the parts affected by the subsequent performance and is subject to the statutory provisions.

## 9. Data

PA will use the data collected from customers within the framework of the statutory provisions to perform the contracts with the customers.

## 10. Retention of Title

**10.1** PA reserves title to the delivered goods until all claims have been fulfilled which exist against the customer based on the business relationships at the time the contract is concluded. This shall also apply to any future claims that PA acquires from the ongoing business relationship with the customer.

**10.2** The customer shall treat the goods delivered under retention of title with due care and appropriately insure the same at its own costs against damage caused by fire, water and theft at their original value. Maintenance and inspection work that may become necessary shall be carried out by the customer at its own expense in due time.

**10.3** If the customer culpably violates the contract, in particular in the event of default in payment, PA is entitled to take back the subject-matter of the contract. Taking back the subject-matter of the contract does not constitute a withdrawal from the contract unless PA explicitly declared a withdrawal in writing.

**10.4** The customer is not entitled to pledge the subject-matter of the contract or assign it as a security prior to the transfer of title.

## 11. Use of Software and Documents

**11.1** If the contractually agreed delivery includes software, the customer shall be granted a non-exclusive right to use the delivered software including its documentation. The software is only for use on the system with the serial number as specified.

**11.2** Any other rights in the software and the documentation, including copies, shall remain with PA and the software supplier, respectively.

**11.3** The customer is entitled to create a backup copy if this is necessary to secure the future use. The customer shall attach a label to the backup copy in a clearly visible position which reads "backup copy" as well as a copyright notice of the manufacturer. The customer is only entitled to decompile and copy the contractual software insofar as this is permitted by law. This shall only apply under the condition that PA failed to provide the customer, upon the latter's request, with the required information within an adequate deadline. The customer must not provide the software to any third party.

**11.4** PA reserves ownership rights and copyrights with respect to samples, cost estimates, illustrations, drawings, calculations, films,

templates, slides, repros, blueprints and other materials (hereinafter jointly referred to as "**Documents**"); such documents may not be made available to third parties or be exploited by the customer for its own purpose or those of a third party without the written consent of PA. This shall apply irrespective of whether they are marked as confidential information. Otherwise PA is entitled to claim damages without prejudice to other rights.

**11.5** If documents form part of the contractually owed delivery of PA, the customer will be granted a simple non-exclusive right to use them in connection with the respective goods. A use for other purposes, in particular for purposes of reproduction etc., shall be explicitly excluded.

**11.6** PA warrants that the software has the agreed quality and that the customer will be able to use the contractual software without violating any third-party rights. The warranty for material defects does not apply in case of defects which are due to the licensed software being used in a hardware and software environment which does not fulfill the requirements of the software, neither does it apply to changes or modifications to the software made by the customer without being entitled to do so by law or these Terms and Conditions or without the prior written consent of PA.

**11.7** The customer is only entitled to use the software on one device with the serial number as specified.

**11.8** If the customer acquires a multi-user license, the customer is entitled to use the software on another device. For multi-user licenses no additional documentation is delivered.

**11.9** The software may contain third-party software as an element. The customer is not entitled to extract individual elements from the software.

## **12. Export**

**12.1** The customer undertakes to export the goods and technical information supplied by PA exclusively in compliance with the pertinent export regulations and to impose the same obligations on its buyers.

**12.2** Any and all taxes, fees and charges in connection with the performance of the services outside of the Federal Republic of Germany shall be borne by the customer or, if these have already been paid in advance by PA, these shall be reimbursed to PA.

## **13. Indication of the Place of Origin**

Any change to the products of PA, in particular every marking indicating the origin of the customer or a third party or implying that the product is of the origin of the customer or a third party, is strictly forbidden unless PA has given its prior written consent.

## **14. Place of Performance, Jurisdiction, Applicable Law**

**14.1** Place of performance shall be the place of business of PA in Berlin, Germany.

**14.2** Berlin shall be the place of jurisdiction for all disputes arising from the business relationship.

**14.3** The laws of the Federal Republic of Germany shall apply. The provisions of the UN Convention on the International Sale of Goods shall be excluded.

## **II. Special Provisions for Services and Assembly Work**

**In addition to the terms and conditions set out in clause I, the following provisions shall apply to any assembly work and services.**

### **1. Assembly Services**

**1.1** PA only owes assembly services if this was explicitly agreed.

**1.2** The customer shall inform the employees of PA at its own costs about existing safety regulations and risks and take any measures required to protect people and property at work. The customer shall render at its own costs the necessary support and assistance within the required scope, such as the provision of water and electricity, heating, lighting, operating power, required connections, dry and lockable rooms for tool storing and as a common room for the employees of PA etc.

**1.3** The customer's assistance must guarantee that the work of PA can begin immediately after the personnel of PA has arrived and

can be carried out without delay until acceptance. The customer is obliged to carry out the cleaning of the location of repair as well as the transport of the parts to be assembled to the location of assembly. Furthermore, PA must be granted access to the Internet via the customer's infrastructure.

**1.4** If the customer does not fulfil its obligations, PA is entitled, but not obliged, to carry out the actions to which the customer is obliged in its place and at its costs.

**1.5** For the avoidance of doubt, the customer is not entitled to issue instructions to the employees of PA, except in case of imminent danger. In this context, the customer undertakes to clarify any questions regarding the planning and performance directly with the contact person appointed by PA for this purpose.

**1.6** The assembly by PA principally includes a commissioning unless the machine is not "complete" within the meaning of the Directive 2006/42/EC of the European Parliament and of the Council on machinery. In this case, a functionality test is carried out only.

**1.7** If expressly agreed, PA shall carry out an instruction on operating the machine.

## **2. Hotline-Service and other Service Activities**

**2.1** For potential issues that may be occurring with the goods provided, PA offers a hotline per email or phone during 8 a.m. and 5 p.m. CET, which uses a ticketing system enabling a response time of usually 72 hours. The first 30 minutes of the hotline service during which PA will record the issue and, if possible, provide a first evaluation, will not be charged to the customer. From the 31<sup>st</sup> minute on, the time on the call will be charged to the customer according to PA price list. After the initial evaluation, PA will evaluate whether the issue falls under any warranty or estimate the costs for the solution of the issue and provide the customer with a quotation. The customer can then issue a purchase order and the service will be scheduled and invoiced accordingly.

**2.2** In addition, PA provides the customer with a special hotline for urgent cases that is also operated based on a ticket system with a response time of three hours. Here we refer to the price list for technical services of PA. The further proceeding will be according to clause II.2.1 sentence 4.

**2.3** For all other service activities, PA is only obliged to perform these if this was expressly agreed upon. This does not affect the obligations of PA under statutory provisions.

**2.4** Any appointments for other service activities shall be agreed upon between PA and the customer at least four weeks before the service appointment requested by the customer.

**2.3** Prices for service activities principally exclude costs for required repairs. The customer shall be informed of the prices separately by way of a cost estimate. A cost estimate is principally not binding and PA may exceed the estimate by 15% without the customer's consent. For any cost overrun in addition to this, PA shall obtain the customer's prior consent.

## **3. Hourly Rates, Travel Costs and Costs of Material**

For all services performed by PA the list prices as updated from time to time shall apply. On request, the customer shall be informed of these prices in advance.

## **4. Training**

In case of agreed training by the employees of PA, the customer shall bear the travel and accommodation expenses. If the customer does not assert its claim to receive training, the claim is forfeited after a time period of three years.

## **III. Special Provisions for the Performance of Work**

**In addition to the terms and conditions set out in clauses I and II and/or, in deviation from clauses I and II (if applicable), the following provisions shall apply to the performance of work.**

### **1. Remuneration, Due Date**

PA is entitled to request partial payments and/or advance payments.

## 2. Acceptance

The customer is obliged to accept the work as soon as he has been informed about its termination. The acceptance shall be carried out in writing, at the latest within two weeks from the notification of the readiness for acceptance unless otherwise agreed. If the customer does not accept the work within this period despite being obliged to do so, this shall be deemed a failure of acceptance. The use for production shall replace the acceptance. The acceptance may also take place on the premises of PA when the customer is present. For this purpose, a respective report is prepared following a standard procedure defined by PA. Acceptance may not be refused or delayed for minor defects.

## 3. Passing of Risks

If the work is performed on the premises of the customer, the risk shall pass to the customer on the day on which the work is completed. Apart from that, the risk passes at the point in time at which the customer collects the subject-matter of the contract or the subject-matter of the contract is handed over to the person in charge of the transport. The provisions of clause I. 4.4 and clause I. 5.7 shall remain unaffected.

## 4. Retention of Title

4.1 If the performance of work is carried out on the customer's premises and if PA produces parts on the customer's premises, PA retains the title herein until all claims have been fulfilled which exist against the customer based on the business relationships at the time the contract is concluded. In all other respects, clause 10 of these Terms and Conditions shall apply accordingly.

4.2 Any processing or alteration by the customer shall always be effected on behalf of PA in its role as manufacturer within the meaning of Sec. 950 BGB.

4.3 If the goods under retention of title are processed with other objects which do not belong to PA, PA shall acquire joint ownership of the new object, with such value being the value of the item provided by PA (purchase price plus value added tax) in proportion to the other processed objects at the time of the processing.

4.4 If the goods manufactured by PA are inseparably mixed with other objects that do not belong to PA, PA shall acquire joint ownership of the new object, with such value being the value of the goods under retention of title (purchase price plus value added tax) in proportion to the value of the other mixed objects at the time of the mixing. If the mixing is carried out in such a way that the customer's part is deemed the main part of the object, the parties agree that the customer shall grant PA joint ownership on a proportionate basis. The customer shall keep the resulting sole ownership or joint ownership on behalf of PA.

## 5. Warranty for Defects

Warranty rights are subject to the condition that the customer immediately notifies PA in writing of obvious defects, however, no later than eight days from acceptance of the goods.

## 6. Termination Right

The customer is entitled to terminate the contract for work and services prior to the completion of the work only for good cause (*aus wichtigem Grund*).

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