

General Delivery Terms and Conditions (GTC) of Franke + Pahl Ingenieurgesellschaft mbH

I. Scope of Application and Written Form Requirement

1. In the absence of a separate agreement made in individual cases we shall submit quotations and execute deliveries exclusively on the basis of these GTC. Our General Project Terms and Conditions, which shall prevail over these GTC within their scope of application, shall apply to project services in the discipline of equipment construction, including line construction and complementary services in the disciplines of switch equipment manufacturing, automation, software development, engineering and design services as well as installations and industry relocation services on behalf of the contracting party. Any application of general terms and provisions of the contracting party is herewith expressly denied; same shall not be considered integral components of the agreement. Our GTC shall also apply to subsequent projects, even if this is not explicitly reiterated upon their contract execution. Any of our prior GTC shall be superseded by these GTC.
2. These GTC shall apply only to relationships with companies and other legal entities of public law and public-legal special entities.
3. Any and all ancillary agreements, additions or modifications of agreements made, including these GTC shall be made in writing. Any waiver of the written form requirement pursuant to Sentence 1 shall require a written agreement.

II. Execution of the Agreement

1. The contract content shall be governed by the order confirmation we send, if any, as well as these GTC unless we receive a written objection within eight days of the date of the order confirmation.
2. Unless specifically identified as such, any product descriptions, information and advertising material provided by us, and in the case of software in particular any product describing information provided in program descriptions and other documents shall as such not constitute quality warranties.
3. We reserve the right to implement modifications for technical reasons even after the execution of the agreement, provided they do not have any substantial impact on the agreed-upon functionality of the object delivered.

III. Delivery and Transfer of Risk

1. In the absence of an express written agreement, the quotation of delivery dates and delivery times shall be non-binding. Any firmly agreed-upon delivery times shall begin at the earliest upon receipt of the order confirmation, however, never before the timely and proper fulfillment of any participation, in particular information provision obligations of the other contracting party and never before receipt of any agreed-upon down payment/deposit. Delivery times shall be deemed complied with if the delivery object has left our works by the delivery time expiration date or if pick-up or shipping readiness has been communicated.
2. The risk shall transfer to the other contracting party as soon as the goods leave our works; and in the event that they are picked up by the other contracting party, the risk shall transfer upon communication of pick-up readiness. Shipment shall be performed at the expense and risk of the other contracting party unless otherwise agreed upon. Unless written instructions from the other contracting party are in hand, we shall determine the mode of shipment. Upon request and at the expense of the other contracting party we shall insure shipments against common transportation risks. In the event that shipment should be delayed due to circumstances the other contracting party is responsible for, the risk shall transfer to the other contracting party upon communication of shipment readiness.
3. We shall strive to comply with agreed upon delivery times. In the event that we are in default of delivery the other contracting party, provided it renders plausible evidence that it has sustained damages as a result, shall have the right to demand an all-inclusive delay compensation in the amount of 0.3 of the order value for each complete week of delay, however, no more than 5 % of the order value in total. In any additional damage compensation entitlements of the other contracting party based on late delivery shall be excluded. This shall not apply if the delay is based on the breach of a cardinal contractual duty pursuant to Article IX 1 or in the event of intent or gross neglect or in the event of loss of life, personal injury or health damages, if mandatory liability applies; this shall not result in a modification of the burden of proof to the disadvantage to the other contracting party.
4. This shall be without prejudice to the other contracting party's right to rescind from the agreement pursuant to statutory requirements. However, this shall be contingent upon us being responsible for the delay. The other contracting party shall undertake to declare, upon our request within a reasonable period of time, whether the latter intends to rescind from the agreement after the expiration of the deadline or whether the latter insists on delivery.
5. Operational interruptions beyond our control (insufficient supplies, strikes) and other events of force majeure as well as tardy self delivery shall release us from our obligation to perform for the duration of the obstacles and shall result in a congruent deferral of deadlines or schedules, which also include a reasonable start-up period. This shall also apply if such circumstances arise with sub-suppliers. In the event that we are released from the obligation to perform, we shall reimburse any advance performances made by the other contracting party. Any further damage compensation entitlements of the other contracting party shall be excluded.
6. Partial shipments shall be permitted within a reasonable scope.

IV. Prices and Payment Terms

1. Unless otherwise stipulated in the order confirmation, the prices in effect at the time of delivery shall apply. All stipulated prices shall be subject to additional applicable value added tax. Packaging and shipping costs as well as transport insurance, if applicable, shall be billed separately.

2. Unless otherwise agreed upon, the other contracting party shall be required to pay our invoices within 14 days after receipt, net cash without any deductions, all fees paid through to the payment location. Any agreed upon payment terms shall begin on the day of receipt of the invoice by the contracting party. A payment shall be deemed made only once we have access to the amount.
4. Payments by bank draft shall be permitted only based on prior agreement. The acceptance of bank drafts or checks shall be for the purpose of fulfillment only; the time actual payment shall be deemed made shall be the date the draft or check amount is cleared by our bank; and for all draft and check presentation procedures the day we are no longer held liable for the amount. All costs and fees incurred in conjunction with the discounting or collection of drafts or checks shall be borne by the other contracting party.
5. The other contracting party shall be in default of payment if payment is not made upon issuance after a notice following the due date. Default shall have occurred at the latest, even in the absence of a notice, 14 days after the due date and receipt of invoice. In the event of late payment we shall have the right to demand the payment of late payment interest in the amount of 8 percentage points above the pertinent annual prime rate pursuant to § 247 BGB (German Civil Code) as of the start of the default. We reserve the right to prove and claim higher damages as a result of the default.
6. In the event of default on payment and without prejudice to any other statutory rights we may be entitled to, we shall have the right to make payable immediately and without prior notice any partial compensation obligations of the other contracting party due at a later date as well as any remuneration obligation of the contracting party arising from other contracts; we shall also have the right to withhold any other pending rendering of goods and services under the individual contract or other contracts and to demand advance payments or collateral prior to the performance. In such cases we shall also have the right to revoke any accepted bank drafts without regard to their terms and demand cash payment. The above provisions shall also apply if, after accepting the order, we should become aware of facts that trigger justified misgivings about the contracting party's ability to pay.
7. The other contracting party shall have the right to set of receivables against our receivables only if the former are undisputed, have been finally adjudged by a court of law or are ready for judgment. The contracting party shall have the right to claim withholding rights only for claims arising from the same contractual relationship. The contracting party shall not be entitled to any right to withhold based on partial services pursuant to § 320 Article 2 BGB.

V. Title Retention Rights

1. We shall retain title to any goods delivered by us (title retention goods) until all receivables due us arising from the business relationship with the other contracting party have been satisfied, regardless of the legal grounds. In the event of an arrangement of payment on account, the title retention goods shall be deemed collateral for our pertinent receivables balance.
2. As long as the other contracting party is not in default pursuant to Article IV 5, the party shall have the right to connect, blend, process or convert the title retention goods within the scope of normal business transactions. In this case we shall be considered the manufacturer pursuant to § 950 BGB with the stipulation that we shall acquire title to the new objects in their respective processing or conversion states without assuming any obligations as a result. The other contracting party shall keep the new object in its custody on our behalf at no cost to us. In the event of blending, melding or connection of our title retention goods with objects we do not own, we shall acquire co-title to the new objects in the ratio of the invoice amount for our title retention goods to the purchase price of the other processed goods at the time the connection, blending, melding or processing is performed. In the event that the other contracting party should acquire the sole title to the new object despite the aforementioned agreement, we shall already have entered into an agreement with the other contracting party that the latter shall grant us co-title to the object in the ratio of the invoice amount for our title retention goods to the purchase price of the other processed goods and that the other contracting party shall keep same in its custody on our behalf at no cost to us. The new objects shall subsequently be subject to the same terms as the title retention goods.
3. The other contracting party shall have the right to resell title retention goods we own wholly or partially during normal business transactions as long as the former is not in default pursuant to Article IV 5. Any pawning or pledging as collateral by the other contracting party shall not be permitted. In the event of a garnishment or other impediment placed on our rights, the other contracting party shall be required to emphasize the existing title retention attachment and shall notify us immediately. The other contracting party herewith assigns any receivables from the resale of our solely or co-owned title retention goods along with all ancillary and collateral rights, including bank drafts and checks as well as receivables balances to us. We herewith accept this assignment. In the event of co-ownership, the priority ranking advance assignment shall be limited to the co-ownership of the object portion of the sale. In the event that our solely or partially owned title retention goods are sold with other objects, regardless of whether same occurs prior to or after any processing, combination, blending or melding, the agreed upon advance assignment shall be limited to the amount of the portion of the invoice equivalent to the value of our title retention goods compared to the total invoice amount.
4. The other contracting party shall be authorized to collect the receivables from its customers as long as the former is not in default pursuant to Article IV 5 or unless we revoke this authorization. The receivables shall be collected for payment to a separate account of the other contracting party and shall be kept separate from other monies of the other contracting party or any third parties. In the event of default or upon occurrence of the prerequisites for premature due dates pursuant to Article IV 6, we shall have the right to disclose the assignment and demand the other contracting party submit all overviews and documents required for us to collect the receivables.
5. The other contracting party shall properly store the goods, even if we only have co-title rights vested in them and shall adequately insure same at its expense against any insurable risks. Upon request, the pertinent written proof of insurance shall be submitted to us. Claims against the insurance in the event of an incident shall be herewith assigned to us by the other contracting party up to the amount of the invoice value of the title retention goods damaged. We herewith accept this assignment. We shall have the right to verify the existence of the title retention goods and of the receivables assigned to us at any time. Receipts and records for same shall be presented to us upon request at the premises of the other contracting party.

6. In the event of the other contracting party's contract breaching conduct, in particular in the event of default on payments pursuant to Article IV 5 or in the event of the occurrence of the prerequisites for premature payment due dates pursuant to Article IV 6, we shall have the right to prohibit the use, connection, blending, processing and conversion and further resale of the title retention goods and to seize same. The other contracting party herewith agrees to permit the entry of our employees or commissioned agents to enter the other contracting party's warehouse and business premises for this purpose. The seizure or enforcement of our title retention shall not be contingent upon our rescission from the agreement. These acts or the garnishing of delivered goods by us shall not constitute a rescission from the agreement unless we expressly declared such action to be construed as same in writing. Upon seizure of title retention goods we shall have the right to either credit same at the fair market value on the day of seizure in compliance with its condition based on our discretion or to liquidate same accordingly. The liquidation revenues shall be deducted from the liabilities of the other contracting party after any reasonable liquidation costs have first been deducted from said revenues. In the event of contract breaching conduct of the other contracting party, the latter's authorization to collect any receivables assigned to us shall be rendered null and void as well.
7. We shall undertake to release the collateral we are entitled to according to the above provisions at our discretion upon the other contracting party's request to the extent that its recoverable value exceeds the value of the receivable to be securitized by 10 % or more.

VI. Copyrights and Licensing Terms and Conditions for Software

1. The other contracting party shall undertake to comply with the copyright and other intellectual property rights vested in the delivered goods, in particular in software. This shall also apply if the copyright and other intellectual property rights are those of third parties.
2. In the event that software of third party manufacturers (third party software) should be delivered, the other contracting party shall undertake to utilize the delivered software only in compliance with the licensing conditions of the pertinent manufacturer and in the event of resale, provided same is permitted, impose the same restrictions upon the purchaser.

VII. Warranties

1. Unless otherwise agreed upon in the order confirmation or these GTC, we shall not assume any warranty to the other contracting party for the quality of our deliveries.
2. The other contracting party shall undertake to inspect the delivered objects immediately upon receipt and to promptly communicate any deficiency claims to us in writing. The other contracting party shall not have the right to delay or refuse the acceptance of deliveries based on insignificant deficiencies.
3. In the event of timely claimed deficiencies pertaining to the delivery object, the other contracting party shall initially be entitled to – at our discretion – remedial action or replacement delivery within a reasonable period of time. The required expenditures, such as labor and materials costs shall be borne by us only if these expenditures are not increased by the fact that the service object was relocated to a different location than the agreed upon place of fulfillment retroactively; unless such an act of relocation is congruent with the object's purpose of utilization. At our discretion, replaced parts shall either be returned to us or professionally disposed of by the other contracting party.
4. In the event that we should fail to complete the remedial action successfully by the reasonable deadline to be set by the contracting party or if the remedial action should fail as such, the other contracting party shall have the right to at contracting party's discretion demand reduction (reduction of the agreed-upon remuneration), or, if the breach of duty more than minimal, rescind from the agreement, without prejudice to the contracting party's entitlement to damage compensation and/or expense reimbursement pursuant to Article IX.
5. Our deficiency remedy obligations shall be null and void if the deficiency was caused by reasons the other contracting party or third parties are responsible for, in particular if the service object was altered by the other contracting party or a third party unilaterally, in particular as a result of the installation of third party components, or, in the case of software by retroactive programming; or if the service object was not used by the contracting party or a third party in manner compliant with the applicable and effective operating provisions, or in the case of software, program documentation; or if same was used in combination with systems or components other than those presumed by us or if the defect is the result of other causes beyond our control, such as fire, power outage, errors in equipment, component, hardware or software of other manufacturers. The same shall apply to goods that were further processed or resold without our written consent pursuant to Article V 2 although they were obviously deficient or after the detection of a concealed deficiency. The other contracting party shall assume the burden of proof to demonstrate that the deficiency claimed by the former already existed at the time of risk transfer.
6. Only in urgent cases, for instance in the event of hazards to the operational security or in the interest of the prevention of disproportional damages and subject to the condition that we cannot ourselves remedy the deficiency within a reasonable time period upon consultation with the other contracting party shall the other contracting party have the right to eliminate the deficiency itself or have same remedied by a third party and to demand reimbursement of the necessary expenses. This shall also apply if we are in default of eliminating the deficiency.
7. Deficiency entitlements with the exception of damage and expense reimbursement entitlements based on deficiencies subject to the provisions of Article IX shall be subject to a statute of limitations of twelve months as of the date of risk transfer. This shall not apply in cases where the law mandates longer statutes of limitation, such as pursuant to § 479 Section 1 BGB (subrogation entitlements for consumption goods purchases). For replacement deliveries or remedial work we shall assume liability through the expiration date of the statute of limitations covering the original delivery object.
8. In the event of deficiency claims the other contracting party shall have the right to withhold payments only to the extent that is proportionate to the deficiencies in hand, provided said party's entitlements are undisputed or have been finally adjudged by a court of law. In the event that the deficiency claim filed is unjustified, we shall have the right to demand reimbursement of the expenditures incurred from the other contracting party.

VIII. Third Party Rights

1. Within the scope of the statutory provisions we shall warrant that the work product generated by us within the scope of rendering project services shall not be encumbered by any third party rights that would be in conflict with the contract compliant utilization by the other contracting party.
2. In the event that third parties should claim such rights, we shall make our best efforts to defend the contracting party against third party claims of such rights at our expense. The other contracting party shall notify us immediately if any such rights are claimed against the other contracting party and shall grant us all powers of attorney and assign to us all authorities required to defend the contracting party against rights claimed by third parties. We shall be required to reimburse the other contracting party for any costs incurred that are necessary to pursue the other contracting party's rights.
3. Once it is definite that legal deficiencies do in fact exist, we shall, at our discretion, have the right to either eliminate the rights of third parties or their claims, which do hamper the contract compliant use of the work product by taking appropriate action or shall modify or substitute the work product in such a manner that it no longer infringes upon third party rights if and to the extent that such action does not have a major adverse impact on the agreed upon function of the work product.
4. In the event that we should fail to eliminate the legal defect pursuant to Article VIII 2 by the reasonable deadline to be set by the other contracting party, the other contracting party shall have the right, at contracting party's discretion to either demand reduction (reduction of the agreed-upon remuneration), or if the breach of duty is not only minimal – rescind from the agreement, without prejudice to any other damage compensation or expense reimbursement entitlements pursuant to Article IX.
5. Article VII 8 shall accordingly apply to the statute of limitations for claims based on legal deficiencies.

IX. Liability

1. Subject to the provisions of Article IX 2 we shall assume liability based on the statutory provisions provided the contracting party files damage compensation or expense reimbursement claims based on intent or gross neglect; or in cases of wrongful death suits, personal injury suits or suits pertaining to health damages, or in the event that we culpably breach a cardinal contractual duty. Cardinal contractual duties shall be such obligations whose fulfillment is required to ensure the proper performance of the contract and whose breach puts the attainment of the purpose of the contract in jeopardy and into the compliance with which the other contracting party would regularly invest good faith.
2. In the event that we are not accused of any intentional or grossly negligent breach duty or if no wrongful death suits, personal injury suits or suits pertaining to health damages are filed, the statute of limitations shall be twelve months and our damage compensation liability shall be limited to the amount that is foreseeable and typically expected for damages. In the event of data loss we shall at a maximum be liable for the expense that would have been incurred if the contracting party had properly backed up the data and the data would have had to have been recovered. Expense reimbursement entitlements of the contracting party shall in any event be limited to the interest the other contracting party has vested in the fulfillment of the agreement.
3. With the exception of the compulsory provisions of the Product Liability Act, which shall not be prejudiced by this at all, any further liability in relation to damage compensation or expense reimbursement than the liability stipulated in these GTC shall be excluded, regardless of the legal grounds of the entitlement claimed. We shall also not be liable for technical information and consulting services unless same were agreed upon in separate agreements along with an arrangement for special remuneration or they are cardinal contractual obligations pursuant to Article IX 1.
4. In the event that our liability is excluded pursuant to these GTC, this shall also apply to the liability of our corporate organs as well as our agents and representatives, especially our employees.

X. Governing Law, Place of Fulfillment and Place of Jurisdiction

1. The legal relationship between our company and the other contracting party shall be governed exclusively by the laws of the Federal Republic of Germany. The UN Convention on the International Sale of Goods shall not apply.
2. The sole place of fulfillment for both contracting parties shall be Hamburg, Germany.
3. The sole place of jurisdiction for any and all litigation arising from or in connection with the agreement shall be the competent circuit or state court in Hamburg, depending on factual jurisdiction. We shall, however, also have the right to file suit against the contracting party at the latter's general place of jurisdiction. These provisions shall be made without prejudice to any mandatory exclusive places of jurisdiction dictated by applicable laws.

XI. Final Provisions

1. In the event that certain provisions of these GTC or of the pertinent individual contract should be or become ineffective or unenforceable or should these GTC or the pertinent individual contract contain any omissions, this shall not affect the effectiveness of the remaining provisions and the individual contract as such. This shall not apply if upholding the individual contract would impose an unacceptable hardship on one of the parties.
2. The contracting parties shall undertake to strive to substitute the ineffective or unenforceable provision by an effective or enforceable provision that meets the purpose and intention of the ineffective or unenforceable provision as closely as possible as far as the economic result is concerned. Any omission shall be remedied through the making of a complementary provision by the parties, which shall meet the economic objective of the respective individual contract as closely as possible.

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