

# Terms of Delivery and Payment

(Release 01.06.2023)



## I. SCOPE

- (1) The following terms and conditions of delivery and payment shall apply to all services to be provided by PRO DESIGN to Customer for the entire duration of the business relationship, unless expressly agreed otherwise.
- (2) Customers are exclusively entrepreneurs within the meaning of § 14 of German BGB.
- (3) These terms and conditions shall be recognized as binding by both parties upon conclusion of the contract. Contradictory terms and conditions of the customer shall be deemed expressly excluded. Supplementary terms and conditions shall apply only if and to the extent that PRO DESIGN has given its written consent. Subsidiary agreements shall be effective only with our written confirmation.

## II. OFFER and CONTRACT COMPLETION

- (1) The order by the customer shall be deemed to be an offer within the meaning of §§ 145 ff. of German BGB. Offers by PRO DESIGN are subject to change and non-binding with respect to price, quantity, delivery period and delivery possibility and constitute merely an invitation to Customer to submit an offer. Statements regarding delivery terms refer to Incoterms 2010. Customer shall be bound to its order for 4 weeks; all requests for changes, including a cancellation, shall be subject to a charge. Subject to a successful international sanctions list check (e.g. financial sanctions list), the purchase contract shall be deemed concluded if PRO DESIGN has confirmed acceptance of the order in writing or in electronic form within such period or has made delivery. PRO DESIGN shall, however, give notice of any rejection of the Purchase Order in writing or in electronic form without undue delay after clarification of the deliverability.
- (2) Telephone and verbal supplements, amendments and collateral agreements shall also require written or electronic confirmation by PRO DESIGN to be effective.
- (3) The scope, content and conditions of delivery shall be determined by PRO DESIGN's order confirmation.
- (4) PRO DESIGN reserves the property rights and copyrights to cost estimates, offers, drawings and other documents. The documents may not be made available to third parties.

## III. CANCELLATION or CHANGE OF DATE of orders

- (1) The acceptance of cancellations shall be left to PRO DESIGN. If the cancellation is accepted, PRO DESIGN reserves the right to charge all costs incurred.
- (2) Changes of dates shall only be accepted if they are announced at least 60 days before the originally agreed delivery.

## IV. PRICE

- (1) The price of the object of purchase is ex works Bruckmühl plus statutory value added tax. Ancillary services, such as transfer costs, freight, packaging, etc., shall be charged additionally. PRO DESIGN reserves the right to reasonably increase its offer prices if the price-forming calculation factors have changed in the meantime, for example due to increases in material costs, labor wages, freight costs and customs duties in case of subcontracting from upstream suppliers and the like; price increases by the corresponding percentage of the increase shall be deemed to be agreed. In the event of a change in the exchange rate between the currency in which the goods ordered by Customer are purchased (e.g., in dollars) and the currency in which such goods are sold (e.g., in euros), PRO DESIGN shall have the right to reflect such change in exchange rate in the invoice or in a subsequent invoice. This shall also apply if the change in the exchange rate becomes effective only between the time the quotation or the quotation confirmation is sent to Customer and the time the respective manufacturer invoices PRO DESIGN, as well as in the case of manufacturer-related backlog adjustments. Agreements deviating from the above require the written approval of PRO DESIGN.
- (2) The aforementioned provisions shall also apply to partial deliveries.

## V. TERMS OF PAYMENT

- (1) Payments are due as soon as the customer is notified that the goods are ready for shipment. They shall be made to us in cash without any deduction within 30 days of receipt of the invoice, but no later than 30 days after delivery. We grant a 2% discount for payments made within 10 days. However, PRO DESIGN is also entitled to make delivery conditional on immediate payment (cash in advance); due to increased internal expenses, no cash discount will be granted in this case.
- (2) Checks and bills of exchange shall only be accepted by special agreement and only on account of payment, with all collection and discount charges being charged.
- (3) If the customer is in default with due payment obligations and does not pay this claim in full within a grace period of at least two weeks

to be set, all claims arising from the business relationship shall become due for payment immediately upon expiry of the grace period. For deliveries and services to customers abroad, it is expressly agreed that all costs of obtaining and pursuing legal action in the event of default of payment by the customer, both judicial and extrajudicial, shall be borne by the customer. The same shall apply if Customer's bills of exchange or checks are not honored. In such cases, PRO DESIGN shall also be entitled to perform its further contractual obligations only concurrently with payment of the respective remuneration owed. PRO DESIGN's statutory rights in the event of default by Customer shall remain unaffected, in particular the right to interest on arrears.

- (4) Customer may set off its claims against PRO DESIGN's claims only if its counterclaim is undisputed or if a legally binding title exists and has been acknowledged by PRO DESIGN in writing; Customer may assert a right of retention only with respect to the part complained about and to the extent that such right of retention is based on claims under the underlying contract.
- (5) If Customer is in default of payment, PRO DESIGN shall be entitled to withhold delivery immediately and without notice until payment is no longer in arrears. PRO DESIGN shall not be obliged to compensate any claims for damages.
- (6) PRO DESIGN is entitled to assign receivables from deliveries and services for financing purposes.

## VI. DELIVERY and DELAYED DELIVERY

- (1) Partial deliveries as well as over- or under-deliveries are permissible if this is reasonable or if the delivered quantity is +/- 5% of the respective order quantity, rounded up to whole numbers.
- (2) PRO DESIGN does not guarantee that a delivery date will be met; in particular, no fixed dates shall be agreed.
- (3) Unforeseen obstacles to delivery over which PRO DESIGN has no control and which cannot be averted despite reasonable care under the circumstances of the case - regardless of whether they occur at PRO DESIGN or at a subcontractor - such as force majeure (riot, war, fire, natural disasters), significant operational disruptions for which PRO DESIGN is not responsible, delays in the delivery of essential raw materials, late delivery by the upstream supplier, etc., shall not entitle Customer to claim damages or to rescind the contract; they shall modify previously stated dates and deadlines by the duration of the performance disruptions caused by such circumstances. PRO DESIGN shall have the same rights in case of strikes and lockouts at PRO DESIGN or its suppliers.
- (4) Delivery periods shall commence upon conclusion of the contract, but not before the Customer has provided the information, materials, approvals, materials provided, releases and documents to be provided. Compliance with delivery dates shall be conditional upon the timely provision of these items, at the latest by the agreed dates. If subsequent amendments to the contract are agreed, a new delivery date or delivery period shall be agreed at the same time if necessary.
- (5) Six weeks after a non-binding delivery date or a non-binding delivery period has been exceeded, Customer may request PRO DESIGN in writing to deliver within a reasonable period of time. With this reminder, PRO DESIGN shall be in default.
- (6) PRO DESIGN reserves the right to make minor changes in design or form, deviations in colour and changes in the scope of delivery on the part of the manufacturer/importer during the delivery period, provided that the purchased item is not substantially changed and the changes are reasonable for Customer.

## VII. TRANSFER OF RISK/PERILS

- (1) Shipment and packaging shall be carried out with due care and to the best of our ability. All risks shall pass to Customer upon commencement of shipment, even if carriage-paid delivery has been agreed.
- (2) Upon Customer's request, PRO DESIGN shall insure the shipments against any desired risks and charge the costs thereof.
- (3) If the delivery of the goods is delayed due to Customer's conduct, the risk shall pass to Customer as soon as the goods are ready for shipment.

## VIII. ACCEPTANCE BY THE CUSTOMER, CUSTOMER COMPLAINTS

- (1) Complaints and notices of defects must be received by PRO DESIGN in writing within 14 days after notice of readiness or arrival of the goods at the place of destination. Thereafter, the goods shall be deemed accepted and approved. In each case of delivery, the amount of liability shall be limited by the market value of the respective individual delivery item.
- (2) Customer is obligated to immediately complain to the carrier about any recognizable damage to the packaging or the item upon delivery of the respective delivery item. All claims beyond this, in particular for consequential damages, are expressly excluded.

## IX. CLAIMS OF BUYER DUE TO A DEFECT, WARRANTY

- (1) The documents belonging to the offer, such as illustrations, drawings, technical specifications, weights and dimensions, are only approximate unless they are expressly designated as binding.
- (2) PRO DESIGN shall not be liable on the basis of public statements made by PRO DESIGN or its agents, the manufacturer/importer or its agents, if PRO DESIGN was not aware of the statement and did not have to be aware of it, if the statement had already been corrected at the time of the purchase decision or if and to the extent Customer cannot prove that the statements influenced its purchase decision.
- (3) PRO DESIGN shall not be liable for defects that only insignificantly reduce the value or the suitability of the item. An insignificant defect shall be deemed to exist in particular if the defect disappears shortly itself or can be remedied by Customer itself with insignificant effort.
- (4) The warranty shall be excluded for defects or damages caused by the following reasons and/or to the extent that PRO DESIGN is not responsible for them, but Customer or third parties are responsible for them:
  - determination of design or material by Customer
  - Use of materials or materials provided by Customer
  - Faulty assembly/commissioning by Customer or third parties
  - Incorrect operation or use of unsuitable operating equipment
  - Non-compliance with operating instructions and/or maintenance instructions
  - Improper use or overloading of the device
  - Natural wear and tear
  - Installation and removal of parts or foreign parts
  - Disassembly or modification of the subject matter of the contract without the consent of PRO DESIGN
  - Incorrect installation and improper use of the subject matter of the contract
  - Incorrect, missing, not (any longer) freely accessible or insufficient information from third parties regarding RoHS, REACH/SVHC conformity.
- (5) Claims of the customer due to a defect in the case of a commercial purchase presuppose that the customer has properly fulfilled the inspection and complaint obligations incumbent upon him according to § 377 of German HGB (German Commercial Code).
- (6) The following shall apply to the processing of claims due to defects:
  - Customer shall notify PRO DESIGN of the claims in writing without undue delay.
  - Subsequent performance shall be at the option of PRO DESIGN.
  - Replaced parts shall become the property of PRO DESIGN. When handling warranty claims with foreign customers, PRO DESIGN shall generally not be responsible for customs duties and other special costs related to the place of use or export country of the Purchased Goods. If labor is reimbursed, PRO DESIGN's customary labor rates shall be charged at the labor rates established for the respective country.
  - Claims of Customer for expenses incurred for the purpose of subsequent performance, in particular transport, travel, labor and material costs, shall be excluded to the extent that such expenses are increased because the subject matter of the delivery was subsequently moved to a location other than Customer's original destination.
  - PRO DESIGN shall be granted reasonable time and opportunity to perform the necessary rework after having agreed on a date. PRO DESIGN reserves the right to have the rework performed in a workshop it deems suitable.
  - For rework, supplementation or replacement of delivered parts, the warranty period shall be one year from the date of rework.
  - In the case of third-party work and purchased parts, Customer shall first contact the third-party work manufacturer/importer or supplier for rectification. Customer shall have a claim for remedy against PRO DESIGN only if the manufacturer/importer or supplier fails to remedy the defect within a reasonable period of time.
  - Customer shall provide PRO DESIGN with all information and data necessary to investigate and remedy the defect. This includes, in particular, the right of PRO DESIGN to access and evaluate data of the system and electronic environment. As long as Customer fails to comply with this duty to cooperate, PRO DESIGN may refuse subsequent performance.
  - If the subsequent performance fails for the second time, the customer's right to withdraw from the contract or to demand a reduction (reduction of the remuneration) shall remain unaffected.
- (7) All claims due to a defect shall become time-barred within one year from delivery. The warranty is excluded in the case of delivery of old, used or repaired objects of purchase.
- (8) Claims for damages and reimbursement of expenses shall remain unaffected unless otherwise regulated, limited or excluded in this contract. Consequential damages, on the other hand, remain generally excluded.

## X. RETENTION OF TITLE

- (1) Until payment of all (including future) claims arising from the business relations with Customer, PRO DESIGN retains title to all goods delivered by it.
- (2) All claims of Customer arising from the resale are assigned to PRO DESIGN already at the conclusion of the contract. Customer is entitled to resell only on the condition that the corresponding purchase price claim against the third party is transferred to PRO DESIGN. Customer is not permitted to transfer ownership by way of security or to pledge the goods. Customer shall immediately notify PRO DESIGN in writing of any seizure by third parties of the goods delivered under retention of title. The customer undertakes to insure the goods against theft and elementary risks and to provide proof of this insurance upon request. Claims under this insurance contract shall be assigned to PRO DESIGN. Goods owned by PRO DESIGN shall be stored separately from other goods and marked as the property of PRO DESIGN.

## XI. LIABILITY and INDEMNITY/COMPENSATION

- (1) PRO DESIGN shall be liable, irrespective of the legal grounds, only in the event of intent or gross negligence.
- (2) The above exemption from liability shall not apply if the claim for damages results from a breach of material contractual obligations. If an essential contractual obligation has been negligently breached, the obligation to pay compensation shall be limited to compensation for typical foreseeable damage, but not for consequential damage.
- (3) PRO DESIGN's liability is otherwise excluded.
- (4) To the extent that liability results from paragraph 1 or 2 of this section, such liability shall be limited to the respective order value. Further claims for damages are excluded.
- (5) To the extent that the damage is covered by benefits from social insurance or private insurance, the obligation to pay compensation shall be limited to the respective minimum insurance sums.
- (6) Liability for damages resulting from injury to life, body or health as well as liability under the Product Liability Act shall remain unaffected.
- (7) To the extent that PRO DESIGN's liability is excluded or limited, this shall also apply to the personal liability of its employees, representatives and vicarious agents.
- (8) Customer shall immediately notify PRO DESIGN in writing of any damage or loss for which PRO DESIGN is liable or have PRO DESIGN record such damage or loss.
- (9) The statute of limitations for claims arising from producer's liability pursuant to § 823 of the German Civil Code (BGB) shall be governed by Section IX, item 7, unless otherwise provided in §§ 478, 479 of German BGB.

## XII. Export / Re-Export

Customer shall comply with all applicable national and applicable international export laws and regulations and, in particular, shall not transfer (e.g., directly or indirectly export or re-export, sell, transfer, etc.) the purchased item to any sanctioned person, group, entity or country.

## XIII. DISCRETION and DATA SECRECY

Both parties shall maintain unrestricted confidentiality about confidential matters of PRO DESIGN as well as about its employees. This shall also apply, to the extent permitted by law, for the time after a respective contractual relationship. According to the Federal Data Protection Act, Customer is prohibited, for example, from collecting, processing or using without authorization any personal data of which it becomes aware in the course of an activity, an initiation or an existing contractual relationship. This applies both to business activities within and outside a company. The obligation to maintain data secrecy shall continue to apply even after termination of a contractual relationship. Customer's contact data shall be used for sending information about newer or similar products/services of PRO DESIGN, whereby the right to object at any time is hereby explicitly pointed out.

## XIV. FORCE MAJEURE

Force majeure, labor disputes, riots, official measures and other unforeseeable, unavoidable and serious events shall release the parties from their performance obligations for the duration of the disruption and to the extent of its effect. This shall also apply if these events occur at a time when the affected party is in default. The parties shall be obliged to provide the necessary information without delay within the bounds of what is reasonable and to adjust their obligations to the changed circumstances in good faith.

## XV. FINAL PROVISIONS

- (1) The place of performance for all obligations arising from the supply contract is Bruckmühl, unless another place of performance has been agreed.
- (2) The place of jurisdiction for all disputes arising from or in connection with this contract shall be our registered office, provided that Customer is a merchant, a legal entity under public law or a special fund under public law. PRO DESIGN shall, however, also be entitled to bring an action at Customer's place of business or at any other admissible place of jurisdiction.

- (3) The contract shall be governed exclusively by the laws of the Federal Republic of Germany, in particular also for deliveries and services abroad. The provisions of both the UN Convention on Contracts for the International Sale of Goods and private international law shall expressly not apply.
- (4) Should individual provisions of these terms and conditions be invalid, this shall not affect the validity of the remaining terms and conditions.
- (5) In addition to the above terms and conditions of delivery and payment, the general terms and conditions of delivery and payment for products and services of the electrical industry in the version valid at the time of the conclusion of the contract shall apply, at our discretion, as a supplement.

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