

# General Terms and Conditions

PDV-Systeme GmbH, Dörntener Straße 2 A, 38644 Goslar, Germany  
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## Section 1 Applicability

(1) These General Terms and Conditions (hereinafter “GTC”) shall apply to all business relations between PDV-Systeme GmbH (hereinafter “PDV”) and its clients in the version valid at the time of each conclusion of agreement. Deviating, supplementary or contradictory conditions of the Client, not expressly recognised by PDV, shall be non-binding for PDV, even if PDV does not expressly reject them. The GTC shall also apply if PDV fully carries out the Client’s orders in the knowledge of contradictory or deviating conditions of the Client.

(2) These GTC shall also apply to all future business relations between PDV and the Client or its legal successor, even if not expressly agreed again.

(3) As these GTC shall be subordinate to all other express PDV agreements with the Client, they shall not apply if they contradict such express agreements. In the event of contradictions in the agreement documents, the agreement shall or offer and acceptance shall take priority, followed by any separate service descriptions, then any master agreements between PDV and the client in question, then any special incorporated PDV contractual conditions and finally these GTC.

(4) Should the deliveries and services requested by a Client serve the procurement of IT services by the public sector and if the Client imposes purchase conditions for these deliveries and services in the form of “Supplementary Contractual Conditions for the Procurement of IT Services – EVB IT” recommended by the Coordination and Consultation Department of the German Federal Government for Information Technology in the Federal Administration, these PDV GTC shall not apply.

(5) These GTC shall not apply if the client is a consumer.

## Section 2 Type and Scope of Delivery and Services, Conclusion of Agreement

(1) The deliveries and services to be provided by PDV to the client shall be determined by the agreement according to type and scope, in particular by the offer texts, service descriptions and order

confirmations of PDV (hereinafter “agreement documents”) and the following regulations and definitions.

(2) The agreement between PDV and the client shall become effective only on PDV’s confirmation of the order, however no later than acceptance of the services by the client.

(3) The presentation of PDV services in brochures, advertisements, internet etc. is subject to change and non-binding. The right is reserved to make technical changes acceptable to the Client to information contained in brochures, catalogues and other documents resulting from technical advances and/or technical development.

### **Section 3 Service Content and Service Subject**

Subject to other agreements, the service content and subject of service shall be determined as follows:

(1) In the event of the sale of IT systems or components (hardware), service content and the subject of services relate exclusively to transfer and provision of ownership. In particular, subject to other agreements, neither the preparation of client premises for the respective installation nor the routing of cables and similar, nor the assembly installation of hardware, provision of its technical operability nor the installation of software nor training in its use is owed.

(2) In the event of the sale of standard software (third-party software), service content and the subject of services shall relate exclusively to the permanent assignment of the computer programme stated in the Service Level Agreement and the granting of a non-exclusive licence of unlimited duration pursuant to the manufacturer’s licence conditions.

(3) Insofar as PDV provides consulting services, service content and the subject of services shall relate exclusively to providing the client with assistance in reaching a decision concerning the acquisition of components for its IT infrastructure. In this case, analysis, design and documentation are to be performed regularly but not bindingly.

(4) Insofar as PDV provides planning services, service content and the subject of services shall relate to the creation of service specifications (also known as “performance specifications” or “technical concept”). This solely for the purpose agreed here in the sense of technical service specifications which describes the client’s requirements with respect to specific EDP hardware and/or software, in order to make it possible for third parties to offer or to fulfil manufacturing, production or acquisition services for the client in accordance with the client’s requirements.

(5) Insofar as PDV provides “training courses”, the service content and subject of service shall be the performance of workshops or training courses at the agreed time and training locations. During such training courses, the users will be made familiar with operation of certain products and applications. PDV shall perform the workshops and/or training courses in a professional manner, but shall not be responsible for the learning success of the participants or their ability to apply what they have learnt after the training course has been held.

(6) Insofar as other services relate to the subject of the agreement, service content and the subject of the services shall be described definitively in the agreement documents.

(7) Should the Client request changes or supplements, PDV shall be required to provide these only if they are technically feasible and technically and economically acceptable for PDV. The Client shall be responsible changing the services obligations in the form of an amendment to the Agreement. The extra expense caused by a service change or supplement shall be reimbursed to PDV. This shall also apply for review extending beyond a slight scope of whether and under which conditions the change or supplement can be performed provided that PDV has pointed this out in writing.

(8) PDV shall be entitled to use sub-contractors/sub-contractor companies in performing its service obligations.

#### **Section 4 Prices and Payment Conditions**

(1) All prices and price statements are to be regarded as delivered ex PDV's warehouse, unpacked, uninsured, duty unpaid and plus statutory VAT.

(2) Subject to other agreements, only the services expressly agreed in the respective agreement documents shall be included in the prices. Dispatch costs, costs of implementation, parameterisation, installation and training are, like other additional services which are not expressly defined as the subject of services, to be reimbursed separately.

(3) In the event of late payment by the Client, the Client shall be obligated to pay late payment interest in the amount of eight percentage points over the valid base interest rate. PDV reserves the right to enforce further claims.

(4) Insofar as PDV is not obligated to advance performance, it shall be entitled to perform services against prepayment or cash on delivery only.

#### **Section 5 Time limits, Deadlines and Impediments to Performance**

(1) Expected dates for performance or partial performance of services shall be specified and non-binding according to the expected performance capacity of PDV. The agreement of binding time limits and dates for performance or partial performance of services must be made expressly.

(2) If the client's co-operation is required for performance or partial performance of PDV's services, time limits and deadlines shall be extended to take in the period of time in which the client does not fulfil this obligation despite being requested to do so.

(3) Force majeure, strike, circumstances beyond PDV's control or the control of one of its suppliers shall extend time limits and dates for performing services by the period of impediment.

(4) Partial deliveries and/partial services shall be permitted to a reasonable extent and can be invoiced separately.

#### **Section 6 Dispatch and Transfer of Risk**

(1) Subject to other express agreements, dispatch of goods shall be ex PDV's warehouse at the customer's expense and own risk.

(2) For dispatch and packaging of shipment goods, weight-dependent flat-rate prices shall be charged. The client shall be charged value-related flat-rates for transport insurance. The client must bear the costs for any special type of shipment required.

(3) Should the dispatch or collection be delayed at the client's request or for other reasons for which the client is responsible, the risk is transferred to the client if PDV has singled out the sold goods.

#### **Section 7 Client Obligation to Co-operate**

The provision of services by PDV usually depends on whether and to which extent the Client co-operates in the scope of its performance capacity. Therefore, the Client shall undertake to give PDV the best possible and active support in providing its services. All co-operation services to be provided by the Client are essential for the provision of services by PDV in accordance with the Agreement. The Client shall undertake the following in particular, if necessary for service provision:

(1) To provide PDV, for execution of the Agreement, with all necessary information, documents and materials, in particular change profiles, technical requirements and specifications, source and object

codes, programme sequence, data flow and other plans, creation and application documents etc. for the purposes and the term of the execution of the Agreement.

(2) To grant PDV and the personnel and vicarious agents it deploys in accordance with this Agreement access to the system(s) and facilities constituting the subject of this Agreement, in particular hardware and software and to provide the services of cooperation required for performing remote maintenance.

(3) To work during the execution of the Agreement with adequately and suitably trained personnel and to provide the system conditions required in order to maintain or create smooth functioning of the systems.

(4) To inform PDV immediately of any errors, defects and disruptions in the IT infrastructure.

(5) To agree deadlines and arrange the meetings required for the execution of the Agreement in consultation with PDV in a professional manner and, in the event of doubt, consult PDV in good time.

(6) To ensure that its data is saved regularly, daily, adequately and properly.

(7) The Client shall ensure that all cooperation services required for provision of the agreed services are provided in good time, in full and free of charge for PDV.

(8) Should the Client fail to meet its cooperation obligation, any specified periods shall be extended in to the corresponding and appropriate extent. All other PDV claims shall remain unaffected.

## **Section 8 Legal Consequences of Disruptions in Services**

(1) PDV shall accept guarantees and assurances for the properties of the service only where this has been expressly agreed.

(2) Insofar as PDV provides services in accordance with agreements to provide services, the following shall apply:

PDV shall not owe the Client any specific success. However, it shall execute the services with great care. If PDV fails to provide services in accordance with the Agreement and is responsible for this failure, it shall undertake to provide the services without extra costs for the Client within a reasonable period. Prerequisite is a complaint of the Client which must be made immediately depending on knowledge or grossly negligent ignorance. The Client must immediately review and closely inspect all PDV services. Should PDV still fail to provide significant parts of the services in accordance with the Agreement for reasons for which PDV is responsible within a reasonable period expressly granted by the Client, the Client shall be entitled to cancel the Agreement without notice. If, due to service provision which is not in accordance with the Agreement and after unsuccessful expiry of the period of notice, the continuation of further contractual relationships between the contracting parties is unacceptable to the Client, taking into account all circumstances relating to the individual case and considering the interests of both parties, the Client shall be entitled to cancel the Agreement.

In the event of cancellation without notice, PDV shall be entitled to remuneration for the services performed up to the point at which the cancellation becomes effective. The remuneration shall not be paid for services demonstrated by the Client to be unusable and irrelevant for the Client within four weeks after confirmation of cancellation.

The right to extraordinary cancellation for a different important reason shall remain unaffected.

In such cases, PDV shall be entitled to remuneration for the services performed up to the point at which the cancellation becomes effective. The remuneration shall not be paid for services demonstrated by the Client to be unusable and irrelevant for the Client within four weeks after confirmation of cancellation.

(3) If services in accordance with a work agreement are provided by PDV, these must be accepted. If services in accordance with a work agreement are defective, PDV shall eliminate the defects or carry



out the work again at its own option upon receipt of a corresponding report of defects within a reasonable period of time (subsequent performance). Otherwise, the legal provisions shall apply subject to the liability regulation in Section 16. However, the right to withdraw shall be limited to the respective individual services.

The guarantee period shall be twelve months, starting with the full acceptance of the work by the Client. This shall not apply for damages claims in the event of loss of life, physical injury or damage to health or for damages claims with respect to intent or gross negligence.

(4) Should PDV be required to provide services in accordance with a purchase agreement and should the delivered items be defective, PDV either eliminate the defects or supply defect-free items at its own option having received a corresponding report of defects within an acceptable period of time (subsequent performance). Should the subsequent performance fail, the Client shall be entitled to the legal rights subject to the liability regulations in accordance with Section 16. However, the right to withdrawal shall be limited to the delivered item.

A failure of the subsequent improvement may only be assumed if PDV has been granted sufficient opportunity to improve or to or replace the delivery without the desired effect being achieved, if the subsequent improvement or replacement delivery is made possible, if PDV refuses to perform it or delays it to an unacceptable level, if there are justified doubts regarding the prospects of success or if the situation is unacceptable for other reasons.

The guarantee period shall be twelve months, starting with transfer of risk. This shall not apply for damages claims in the event of loss of life, physical injury or damage to health or for damages claims with respect to intent or gross negligence.

(5) If PDV provides services in accordance with a rental agreement, strict liability for defects in the rented items which already occur before conclusion of the agreement shall be ruled out. Otherwise, the legal provisions shall apply.

## **§ 9 Duty to Inspect and Report Defects**

(1) The Client shall be obligated to inspect delivered goods, work carried out and services provided for apparent defects which an average client would be expected to notice. Apparent defects shall include the lack of manuals as well as considerable, visible damage. It shall also include cases in which a different item/different work or an inadequate volume has been delivered/performed. Such apparent defects are to be reported in writing to PDV immediately, no later than within seven days after the delivery/work has been performed.

(2) Defects which only become apparent at a later date must also be reported to PDV within seven days after being identified by the Client.

(3) In the event of violation of the obligation to inspect and report defects arising from the defective services, the subject of the service shall be considered approved in view of the defects.

## **Section 10 Retention of Ownership**

(1) Goods shall remain the property of PDV until fulfilment of all PDV claims with regard to the client (goods subject to retention of title), even if individual goods have been paid for. Pledging or transferring by way of security the goods subject to retention of title shall not be permitted.

(2) In the event of the resale or leasing – admissible within the scope of ordinary business dealings - of the PDV goods subject to retention of title, the client shall hereby already assign by way of security all future claims accruing to it with respect to its clients arising from the resale or leasing of the products until all PDV claims have been settled without any special declaration being required at a later date; the assignment shall also extend to balance claims arising within the scope of existing current account conditions or termination of such conditions of the client with its clients. In the event of resale or leasing of the goods subject to retention of title together with other goods, without the agreement of an individual price for the goods subject to retention of title, the client shall assign to PDV, with priority



over the remaining receivables, that part of the total price requirement or of the total rental that corresponds to the goods subject to retention of title invoiced by PDV. Until notice of revocation is received, the client shall be authorised to collect the assigned receivables from the resale or rental; however, the client shall not be entitled to dispose of them in another way, e.g. assignment. On request of PDV, the client must make inform its clients of the assignment and provide PDV with the documents necessary for asserting PDV's rights against its clients, e.g. providing invoices and any information required. All costs of collection and any intervention shall be borne by the client. Should the client receive bills of exchange on the basis of the authorisation granted to it to collect the assigned receivables from the resale, ownership of these documents with the vested right as security shall be assigned to PDV. The transfer of the bills of exchange is replaced by the agreement that the client takes them into safekeeping for PDV and then hands them over to PDV endorsed without delay. In the event that the countervalue of the receivables assigned to PDV in cheques is received by the client or a bank of the client, the latter shall be obligated to immediately report their receipt and to transfer them. Ownership of the cheques shall pass to PDV with the vested title as soon as the client receives them. The transfer of the documents is replaced by the agreement that the client takes them into safekeeping for PDV and then hands them over to PDV endorsed without delay.

(3) In the event that the client processes, converts or combines the goods subject to retention of title with other goods, the processing, conversion or combination shall take place on behalf of PDV. PDV shall become the direct proprietor of the article created through processing, conversion or combination. Should this be prevented for legal reasons, PDV and the client shall agree that PDV shall become the proprietor of the new article at the moment of processing, conversion or combination. The client shall store the new article for PDV with the due diligence of a proper businessman. The article created by processing, conversion or combination shall be considered as goods subject to retention of title. In the event of procession, conversion or combination with other goods which are not the property of PDV, the PDV shall be entitled to ownership of a proportion of the new article which reflects the ratio of the value of the processed, converted or combined goods subject to retention of title to the value of the new article. In the event that the new article is resold or leased, the client shall hereby assign to PDV by way of security its claim against its clients arising from its resale or leasing together with all ancillary rights, without the need for any further special declarations. However, the assignment shall only apply in the amount which corresponds to the value of the processed, converted or combined article subject to retention of title invoiced by PDV. The share of the receivable assigned to PDV shall have priority over the remaining claim.

(4) In the event that the article subject to retention of title is combined by the client with real estate or movable items, the client shall also assign to PDV the receivable due to it as remuneration for the combination, together with all ancillary claims without the need for any further special declarations. If the customer is the owner of the real estate or is entitled for other legal reasons to a receivable from the rent for the real estate, the client shall also assign this rent to PDV. With respect to the amount of the assigned receivable, the following shall apply.

(5) If the customer comes completely or partially into arrears with its payment obligation or with the cashing of due bills of exchange or cheques, if it is over-indebted or has suspended payment or if a petition for composition or insolvency proceedings has been filed, PDV shall be entitled to appropriate all goods still subject to retention of title immediately; PDV shall also be entitled to immediately assert the remaining rights from the retention of title; the same shall apply in the event of any other significant deterioration in the client's financial circumstances. The client shall grant PDV or a party commissioned by PDV access to all of its business offices during business hours. The demand for restitution or taking possession shall not be deemed as a withdrawal from the agreement. PDV shall be entitled to commercialise the goods under retention with the diligence of a prudent businessman and to settle its claims with the proceeds.

(6) In the event that the value of the security exceeds the claims of the PDV against the client arising from the current business relationship by more than 10%, PDV shall release the securities to which the seller is entitled at the seller's request.

## **Section 11 Third-party Protective Rights**

(1) Both Parties declare that all materials, company secrets, computer programmes, technical procedures, documentation, plans, drawings, graphics etc. to be provided by them and to be used within the scope of this Agreement or to be provided to the respective other party are unencumbered by third-party rights or that they are at least entitled to share these for execution of the Master Agreement and the respective individual orders and to allow them to be used and processed by the contracting party. Both Parties shall ensure that they have acquired all rights necessary for executing the Agreement, either in the original or through respective agreements, e.g. with employees, freelance employees or other contracting partners or vicarious agents.

(2) If a third party asserts infringement of protective rights against one of the contracting parties, the respective other Party, insofar as it has contributed the subject of the Agreement concerned, must indemnify the asserted Party from all resulting claims, in particular damages claims and from the costs of the legal defence to a reasonable amount. The indemnification shall take place under the condition that a settlement or acknowledgement of the claims asserted by the third party is only made with prior written consent.

(3) In the event of the assertion of violations of protective rights by third parties, the Parties shall immediately inform each other and mutually provide each other with the information and other reasonable support required in order to provide defence against the asserted claim.

## **Section 12 Offset and Right of Retention**

(1) The Client shall be entitled to offset demands or enforce payment retention rights only in the case of undisputed or legally determined demands.

(2) Counter claims of the Client arising from the defective and/or incomplete provision of the respective service by PDV in accordance with this Agreement shall be excluded from the ban on offset and the ban on assertion of payment retention rights.

## **Section 13 Assignment**

The Client shall be entitled to assign the rights arising from this Agreement only with the consent of PDV.

## **Section 14 Confidentiality**

Each contracting party shall treat with confidentiality significant matters pertaining to the respective other party which are not generally known. Hardware, software, models and documents (e.g. reports, drawings, sketches, specimens etc.), which the contracting parties mutually provide to each other may only be used for the purposes set out in the Agreement. Any reproduction or distribution to third parties which goes beyond this is not permitted. In the interests of both parties, the contracting parties must ensure that any documents made available for execution of the Agreement are stored carefully. These documents must be returned no later than at the end of the Agreement. A right of retention regarding these documents is ruled out unless the counterclaim is undisputed or legally determined.

## **Section 15 Data Protection**

(1) The Contracting Parties shall comply with the relevant data protection regulations. In particular, PDV shall gather, process or use the Client's personal data as defined by Article 28 General Data Protection Regulation (GDPR) in accordance with its instructions only. The Contracting Parties shall obligate their employees to comply with data confidentiality in accordance with GDPR.

(2) The Client shall ensure that PDV receives any and all relevant information and facts extending beyond the legal provisions, the knowledge of which PDV requires for the purposes of data protection and confidentiality.

(3) Prior to transferring data, granting access to data or otherwise making data available to PDV, the Client shall ensure the deletion of contents worthy of protection.

## **Section 16 Exclusion of Liability and Limitation of Liability**

(1) PDV shall be liable without limitation

- in the case of intent or gross negligence,
- in the event of loss of life, physical injury or damage to health,
- in accordance with the provisions of the Product Liability Act and
- within the scope of the guarantees it has assumed.

(2) Moreover, PDV shall be liable in the case of negligent violation of obligations, fulfilment of which is essential to the proper execution of the Agreement, violation of which endangers the achievement of the purpose of the Agreement and upon fulfilment of which the Client regularly relies (cardinal obligation), limited in amount to the damages which are foreseeable and typical depending on the subject of the Agreement.

(3) The Client is aware of the significance and necessity of regular, daily, correct data saving. Should the Client fail to save data or fail to save data to the appropriate extent, the liability of PDV shall be limited to the damages which would have been incurred with proper data saving.

(4) No further liability of PDV shall apply.

(5) The above liability limitation shall also apply for the personal liability of PDV employees, representatives and bodies.

## **Section 17 Place of Jurisdiction and Governing Law**

(1) Insofar as the Client is a merchant, a legal entity in public law or a separate fund under public law, the sole place of jurisdiction for any disputes arising from or in connection with the Agreement shall be Goslar. The right of PDV to resort to any court of legal jurisdiction shall remain unaffected by this.

(2) For all legal relationships between the Parties arising from and in connection with this Agreement, the law of the Federal Republic of Germany shall apply with exclusion of the laws governing international purchase of movable goods and international private law.

## **Section 18 Severability Clause**

Insofar as provisions of these General Terms and Conditions are or become ineffective in full or in part, this shall not affect the effectiveness of the remaining provisions of the Agreement. The ineffective provision shall be replaced by the corresponding legal provisions.