

## General Terms and Conditions of Delivery

of the **PE-Systems GmbH**  
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### 1. Validity

- (1) All deliveries, services and offers made by PE-Systems GmbH (hereinafter referred to as "PE-SYSTEMS") shall be made exclusively on the basis of these General Terms and Conditions of Delivery. These are an integral part of all contracts concluded by PE-SYSTEMS with its contractual partners (hereinafter referred to as "Customer") in regard to the deliveries or services it offers. They also apply to all future deliveries, services or offers to the Customer, even if they are not separately agreed again.
- (2) The terms and conditions of the Customer or third parties shall not apply, even if PE-SYSTEMS does not separately object to their validity on an individual basis. Even if PE-SYSTEMS refers to a letter that contains or refers to terms and conditions of business of the Customer or a third party, this shall not constitute an agreement to the validity of those terms and conditions of business.

### 2. Offer and Conclusion of Contract

- (1) All offers made by PE-SYSTEMS are subject to change without notice and are non-binding, unless they are expressly marked as binding or contain a specific acceptance period. PE-SYSTEMS may accept orders or commissions within 14 days of receipt.
- (2) Information provided by PE-SYSTEMS in respect of the delivery or service (e.g. weights, dimensions, utility values, load-bearing capacity, tolerances and technical data) as well as representations of these (e.g. drawings and illustrations) shall only be approximate, unless the usability for the contractually intended purpose requires exact conformity. They are not guaranteed quality features, but descriptions or identifications of the delivery or service. Deviations that are customary in the trade and deviations that occur due to legal regulations or represent technical improvements, in particular the replacement of components with equivalent parts are permissible insofar as they do not impair the usability for the contractually intended purpose.
- (3) PE-SYSTEMS reserves the right of ownership or copyright to all offers and cost estimates submitted by them, as well as drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids that are made available to the Customer. The Customer may not make these items available to third parties, either as such or in terms of content, disclose them, use them themselves or through third parties or reproduce them without the express consent of PE-SYSTEMS. At the request of PE-SYSTEMS, the Customer shall return these items to PE-SYSTEMS in full and destroy any copies made if

they no longer required them in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. If these are not returned, their destruction must be confirmed in writing. An exception to this is the storage of electronically provided data for the purpose of normal data backup.

### **3. Prices and Payment**

- (1) The prices apply to the scope of supply and service listed in the confirmation of order. Additional or special services will be charged separately. The prices are quoted in EUR ex works plus packaging, the statutory value added tax, customs duty for export deliveries as well as fees and other public charges.
- (2) Insofar as the agreed prices are based on PE-SYSTEMS' catalogue price and the delivery is to take place more than six months after conclusion of the contract, the PE-SYSTEMS catalogue prices that are valid at the time of delivery shall apply (in each case less an agreed percentage or fixed discount).
- (3) A down payment of 50% of the respective order sum shall be due upon commissioning. The remaining amount shall be due at the latest upon handover, and if necessary, acceptance, in accordance with Clause 5.
- (4) Invoices must be paid within 14 days without any deductions, unless otherwise agreed in writing. The payment is to be made on the day on which it is received by PE-SYSTEMS. Payment by cheque is not accepted unless it is agreed separately in individual cases. If the Customer does not pay by the due date, the outstanding amounts shall be subject to interest at 5% p.a. from that date; the right to claim higher interest and further damages in the event of default shall remain unaffected.
- (5) Offsetting against counterclaims by the Customer or the withholding of payments due to such claims is only permitted insofar as the counterclaims are undisputed or have been legally upheld or arise from the same contract under which the delivery in question was made.
- (6) PE-SYSTEMS shall be at liberty to perform or render outstanding deliveries or services only against advance payment or provision of security if, after the conclusion of the contract, PE-SYSTEMS becomes aware of circumstances which are likely to substantially reduce the creditworthiness of the Customer and as a result of which the payment of PE-SYSTEMS' outstanding claims by the Customer under the respective contractual relationship (including under other individual orders to which the same framework agreement applies) is jeopardised.

### **4. Delivery and Time of Delivery**

- (1) Deliveries are made ex works.
- (2) Deadlines and dates for deliveries and services proposed by PE-SYSTEMS are at all times only approximate, unless a fixed deadline or date has been explicitly promised or agreed. If shipment has been agreed, delivery periods and delivery dates shall refer to the time of handover to the forwarding agent, carrier or other third party commissioned with the transport, unless expressly stated otherwise by PE-SYSTEMS.
- (3) PE-SYSTEMS may - without prejudice to its rights arising from the Customer's

default – demand from the Customer an extension of the delivery and service deadlines or a postponement of delivery and service dates by the period in which the Customer fails to meet its contractual obligations towards PE-SYSTEMS.

- PE-SYSTEMS shall not be liable for impossibility of delivery or for delays in delivery insofar as these are caused by force majeure or other events that were unforeseeable at the time of the conclusion of the contract (e.g. operational disruptions of any kind, difficulties in the procurement of materials or power, transport delays, strikes, lawful lockouts, shortage of labour, energy or raw materials, difficulties in obtaining required official permits, pandemics or epidemics, official measures or the non-delivery, incorrect or untimely delivery by suppliers despite a congruent cover transaction concluded by PE-SYSTEMS) for which PE-SYSTEMS is not responsible. If such events make it considerably more difficult or impossible for PE-SYSTEMS to deliver or perform services and the hindrance is not only of a temporary nature, PE-SYSTEMS shall be entitled to withdraw from the contract. In the event of temporary hindrances, delivery or service deadlines shall be extended or postponed by the same period as the hindrance period, plus a reasonable recovery period. If, as a result of the delay, the Customer cannot reasonably be expected to accept the delivery or service, they may withdraw from the contract by means of an immediate written declaration to PE-SYSTEMS.

(4) PE-SYSTEMS shall only be entitled to make partial deliveries if

- the partial delivery can be used by the Customer within the scope of the contractual intended use,
- the delivery of the remaining ordered goods is guaranteed and
- the Customer does not incur significant additional expenses or costs as a result (unless PE-SYSTEMS agrees to bear these costs).

(5) If PE-SYSTEMS is in default with a delivery or service or if a delivery or service becomes impossible for them to carry out, irrespective of the reason, PE-SYSTEMS' liability for damages shall be limited in accordance with Clause 8 of these General Terms and Conditions of Delivery.

## **5. Place of Fulfillment, Shipping, Packaging, Transfer of Risk, Acceptance**

- (1) The place of fulfilment for all obligations arising from the contractual relationship is Darmstadt, unless otherwise stipulated. If PE-SYSTEMS is also responsible for the installation, this is to be carried out at the place of fulfilment.
- (2) The shipping method and packaging are subject to PE-SYSTEMS' due discretion.
- (3) If shipment of the goods has been agreed and PE-SYSTEMS has not taken on the transport or installation, the risk shall pass to the Customer at the latest upon handover of the delivery item to the freight forwarder, carrier or other third party designated to carry out the shipment (whereby the start of the loading process shall be decisive). If shipping or delivery is delayed due to

circumstances caused by the Customer, the risk shall pass to the Customer from the day on which the delivery item is ready for shipping and PE-SYSTEMS has notified the Customer of this.

- (4) Storage costs after the transfer of risk are borne by the customer. In the event of PE-SYSTEMS having to provide storage, the cost for this is (0.25)% of the invoiced amount for the delivery items being stored, per extra week. The right to claim and request proof of additional storage costs or lower storage costs is reserved.
- (5) PE-SYSTEMS shall only insure the consignment against theft, breakage, transport, fire and water damage or other insurable risks at the Customer's express request and expense.
- (6) If delivery items are indeed to be accepted, this acceptance is effectuated by both contracting parties signing off the Site Acceptance Test (SAT). Otherwise, the purchased item shall be deemed to have been accepted if
  - the delivery and installation (if PE-SYSTEMS is also responsible for the installation) is completed by means of an effective SAT,
  - PE-SYSTEMS has notified the Customer thereof with reference to the assumed acceptance pursuant to this Clause 5 (6) and has requested that the Customer accept the goods,
  
  - 15 working days have elapsed since the delivery or installation or if the Customer has started to use the purchased item (e.g. the device has been put into operation) and in this case 10 working days have elapsed since delivery or installation and
  
  - the Customer has failed to accept it within this period of time, for a reason other than a defect notified to PE-SYSTEMS, thereby making the use of the purchased item impossible or significantly impaired.

## **6. Warranty, Material Defects**

- (1) The warranty period is one year after delivery or, if acceptance is required, one year after acceptance. This period shall not apply to claims for damages made by the Customer that arise from injury to life and limb, or from intentional or grossly negligent breaches of obligations on the part of PE-SYSTEMS or its vicarious agents, each of which shall become time-barred in accordance with the statutory provisions.
- (2) The delivered items are to be carefully inspected immediately after delivery to the Customer or specified third party. They shall be deemed to have been approved by the buyer in the event of obvious defects or other defects which would have been apparent in an immediate and thorough examination if PE-SYSTEMS does not receive a written complaint within seven working days after delivery. With regard to other defects, the delivery items shall be deemed to have been approved by the Buyer if the notice of defects is not received by PE-SYSTEMS within seven working days after the time when the defect became apparent; however, if the defect was already apparent at an earlier point in time during normal use, this earlier point in time is decisive for the start of the complaint period. PE-SYSTEMS request that disputed delivery items are

returned to PE-SYSTEMS, at no charge to the Customer. If the complaint is justified, PE-SYSTEMS will reimburse the costs of the cheapest shipping route; this does not apply if the costs increase because the delivery item is located somewhere other than the place of intended use.

- (3) Should there be any material defects among the delivered items, PE-SYSTEMS is initially obliged and authorized to repair or replace the goods at its discretion, within a reasonable period of time. In the event of failure, i.e. repairing the delivered goods or delivering replacement goods proves to be impossible or impractical, or these are refused or there is an unreasonable delay, the Customer shall be entitled to withdraw from the contract or commensurately reduce the purchase price.
- (4) If a defect is due to a failure on the part of PE-SYSTEMS, the Customer shall be entitled to claim damages under the conditions specified in Clause 8.
- (5) In the event that components made by other manufacturers are found to be defective, which PE-SYSTEMS cannot remedy for licensing or technical reasons, PE-SYSTEMS will, at its discretion, assert its warranty claims against the manufacturers and suppliers for the Customer account or assign them to the Customer. In the event of such defects, warranty claims against PE-SYSTEMS shall only exist under the other conditions and in accordance with these General Terms and Conditions of Delivery if the legal enforcement of the aforementioned claims against the manufacturer and supplier have been unsuccessful or are futile, e.g. due to insolvency. For the duration of the legal dispute, the statute of limitations of the relevant warranty claims of the Customer against PE-SYSTEMS shall be suspended.
- (6) The warranty shall be rendered invalid if the Customer modifies the delivery item or has it modified by a third party without PE-SYSTEMS' consent and this makes the repair of the defects impossible or unreasonably difficult. In all cases, the Customer is required to bear the additional costs of repairing the defect resulting from this alteration.
- (7) A delivery of used items, agreed with the customer in individual cases, shall be made to the exclusion of any warranty for material defects.

## **7. Intellectual Property Rights**

- (1) In accordance with this Clause 7, PE-SYSTEMS guarantees that the delivery item is free of industrial property rights or third party copyrights. Each contracting party shall notify the other contracting party in writing without undue delay in the event that claims are asserted against them for the infringement of such rights.
- (2) In the event that the delivery item infringes an industrial property right or third party copyright, PE-SYSTEMS shall, at its discretion and at its own expense, modify or replace the delivery item in such a way that the rights of third parties are no longer infringed, but the delivery item continues to fulfill the contractually agreed functions, or procure the right of use for the Customer by concluding a license agreement with the third party. If PE-SYSTEMS does not succeed in doing so within a reasonable period of time, the Customer shall be entitled to withdraw from the contract or to commensurately reduce the

purchase price. Any claims for damages by the Customer shall be subject to the limitations of Clause 8 of these General Terms and Conditions of Delivery.

- (3) In the event of infringement of rights by products of other manufacturers supplied by PE-SYSTEMS, PE-SYSTEMS will, at its discretion, assert its claims against the manufacturers and subcontractors for the Customer account or assign them to the Customer. In such cases, claims against PE-SYSTEMS shall only exist in accordance with this Clause 7 if the legal enforcement of the aforementioned claims against the manufacturer and supplier have been unsuccessful or are futile, e.g. due to insolvency.

## **8. Liability for Damages Due to Fault**

- (1) PE-SYSTEMS' liability for damages, for whatever legal reason, in particular with regards to an inability to make a delivery or due to a delivery being delayed, defective or incorrect, or because of a breach of contract or breach of duties during contractual negotiations and tort, shall be limited in accordance with this Clause 8, insofar as culpability is relevant in each case.
- (2) PE-SYSTEMS shall not be liable in the event of simple negligence on the part of its executive bodies, legal representatives, employees or other vicarious agents, unless this involves a breach of material contractual obligations. Essential contractual obligations include the obligation of a timely delivery and installation of the delivery item, the absence of material and legal defects that impair its functionality or usability more than insignificantly, as well as consulting, protection and care obligations which are intended to enable the Customer to use the delivery item in accordance with the contract or which are intended to protect the life and limb of the Customer's employees or to protect the Customer's property from significant damage.
- (3) Insofar as PE-SYSTEMS is liable for damages on the merits pursuant to Clause 8 paragraph 2, this liability shall be limited to damages which PE-SYSTEMS foresaw as a possible consequence of a breach of contract at the time of the conclusion of the contract or which it should have foreseen by exercising due care. Indirect damage and damage resulting from defects in the delivery item shall also only be subject to compensation insofar as such damage is typically to be expected when the delivery item is used for its intended purpose. The above provisions of this paragraph 3 shall not apply in the event of intentional or grossly negligent conduct on the part of members of the executive bodies or executive employees of PE-SYSTEMS.
- (4) In the event of liability for simple negligence, PE-SYSTEMS' obligation to pay damages for property damage and further financial losses resulting therefrom shall be limited to an amount of EUR 1,000,000.00 per case of damage, even if it is a violation of material contractual obligations.
- (5) The above exclusions and limitations of liability shall apply to the same extent in favor of the committees, legal representatives, employees and other vicarious agents of PE-SYSTEMS.
- (6) If PE-SYSTEMS provides technical information or acts in an advisory capacity and such information or advice is not part of the contractually agreed scope of services owed by PE-SYSTEMS, this shall be done free of charge and to the

exclusion of any liability.

- (7) The limitations of this Clause 8 shall not apply to PE-SYSTEMS' liability for intentional conduct, for guaranteed characteristics, due to loss of life, personal injury or physical harm or under the German Product Liability Act.

### **9. Retention of Title**

- (1) The following agreed retention of title serves to secure the existing current and future claims of PE-Systems against Customer underlying the respective specific individual order.
- (2) Goods delivered by PE-SYSTEMS against payment of the purchase price shall remain the property of PE-Systems until full payment of the secured claims of the respective individual order (reserved goods).
- (3) If third parties seize the goods subject to retention of title, in particular by way of confiscation, the Customer shall immediately notify them of PE-Systems' ownership and inform PE-Systems thereof in order to enable PE-Systems to enforce its ownership rights.
- (4) PE-Systems will release the reserved goods if their value exceeds the amount of the secured claims by more than 50%. PE-Systems is responsible for selecting the items to be released thereafter.
- (5) If PE-Systems withdraws from the contract in the event of breach of contract by the Customer - in particular default of payment - PE-Systems shall be entitled to demand the return of the goods, subject to retention of title (recovery).

### **10. Ancillary Agreements and Written Form Requirement**

- (1) Additions and amendments to the agreements made, including these General Terms and Conditions of Delivery, must be made in writing in order to be effective. With the exception of managing directors or authorized signatories, employees of PE-SYSTEMS shall not be entitled to make verbal agreements deviating from the written agreement. Telecommunication, in particular by e-mail, is sufficient to comply with the written form.
- (2) The purchase contract concluded in writing, including these General Terms and Conditions of Delivery, is solely decisive for the legal relationship between PE-SYSTEMS and the Customer. This contract fully reflects all agreements between the contracting parties regarding the subject matter of the contract. Spoken promises made by PE-SYSTEMS prior to the conclusion of this Contract shall not be legally binding and spoken agreements made by the Contracting Parties shall be replaced by the written Contract, unless expressly agreed otherwise between the Contracting Parties in each case.

## 11. Final Provisions

- (1) If the Customer is a businessman, a legal entity under public law or a special fund under public law or if the Customer does not have a general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for all possible disputes arising from the business relationship between PE-SYSTEMS and the Customer shall be, at PE-SYSTEMS' discretion, Darmstadt or the Customer's registered office. In these cases, however, Darmstadt is the exclusive place of jurisdiction for actions against PE-SYSTEMS. Mandatory legal provisions on exclusive jurisdictions shall remain unaffected by this provision.
- (2) The relationship between PE-SYSTEMS and the Customer shall be governed exclusively by the laws of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11.4.1980 (CISG).
- (3) Insofar as the contract or these General Terms and Conditions of Delivery contain loopholes, those legally effective provisions shall be deemed to have been agreed to **fill these loopholes, which the contracting parties would have agreed to in accordance with the economic objectives of the contract and the purpose of these General Terms and Conditions of Delivery** if they had known about the loophole.

If this contract is drafted in German and English, the German version shall always take precedence in the event of any differences.