

General Terms and Conditions

PRUFREX Innovative Power Products GmbH

PRUFREX Engineering e Motion GmbH & Co. KG

Section 1 General information and scope of application

- I. These General Terms and Conditions apply exclusively to businesses.
- II. The following Terms and Conditions apply to all current and future contractual relationships of the company Prufrex Innovative Power Products GmbH and the company Prufrex Engineering e Motion GmbH & Co. KG, hereinafter referred to as "Prufrex", and are a component of the contractual relationship with the business partner, hereinafter referred to as "Customer".
- III. Terms that conflict with or deviate from these General Terms and Conditions will only be accepted if Explicit written consent by Prufrex has been given.
- IV. Insofar as these General Terms and Conditions contain no regulations, the statutory provisions apply.

Section 2 Offers and offer documents

- I. Offers submitted to Prufrex may be accepted within 10 days by written confirmation.
- II. Prufrex likewise undertakes to abide by offers submitted for 10 days as of their receipt by the Customer. If the Customer does not declare his acceptance within this period, any later declaration shall function as a new offer vis-à-vis Prufrex.
- III. If the Customer rejects an offer or does not accept the offer in good time, he must return all documents submitted (technical drafts, sketches, samples, etc.) to Prufrex at his own expense.
- IV. Prufrex retains ownership and copyrights to all documents furnished to the Customer in connection with the order (e.g. calculations, drawings, etc.). The documents provided may not be made accessible to third parties, unless Prufrex grants the Customer prior written consent to do so (for further regulations see *Section 9 Confidentiality*).

Section 3 Prices and payments

- I. All prices are ex works, including loading at the factory, but excluding packaging and plus applicable VAT (value added tax).
- II. Payment must be made in euros (€). Payment with bills of exchange or foreign currencies may only be made after Prufrex has given its written consent to do so.
- III. Insofar as no fixed price agreement has been made, Prufrex reserves the right to make reasonable price changes on account of a change in the pricing factors (e.g. wage costs, material costs and distribution costs for deliveries) that occur 2 months or more after contract conclusion but before delivery. If the increase is more than 5% of the agreed net purchase price, the Customer is entitled to withdraw from the contract.
- IV. Invoices must be paid within 10 days solely to the account specified by Prufrex in the invoice. Any deduction of a discount is only permitted after a special written agreement has been made.
- V. Return shipments for repair purposes and small consignments within Germany are generally paid by cash on delivery.
- VI. The Contractor has a right of set-off only if his counterclaims are undisputed or have been recognised by Prufrex or if they have been legally established by a court of law.
- VII. The Customer is not permitted to transfer any rights arising from the contractual relationship. Section 354a HGB (German Commercial Code) remains unaffected.

Section 4 Delivery, delivery time and place of delivery

- I. Prufrex will decide on the type of delivery.
- II. If the goods are shipped to the Customer, then the risk of accidental loss or accidental deterioration of the goods is transferred from Prufrex to the Customer upon their dispatch, at the latest when leaving the factory/warehouse of Prufrex. This applies regardless of whether the goods are shipped from the place of performance or regardless of whoever bears the freight costs. The transfer of risk also applies if the transport is carried out with Prufrex's own means of transport.
- III. If the shipment or the delivery of the shipment is delayed for reasons for which the Customer is responsible, or if the Customer is in default of acceptance for any other reason, the risk of accidental loss or deterioration shall pass to the Customer at the time of the delay.
- IV. Compliance with Prufrex's delivery obligation presupposes the timely and proper fulfilment of the Customer's obligations.

- V. The unconditional acceptance of a delayed delivery or service by the Customer constitutes a waiver of the claims which may be due to the Customer on account of the delayed delivery or service.
- VI. The agreed delivery period shall be extended to a reasonable extent in the event of unforeseen obstacles outside Prufrex's scope of responsibility. Such an obstacle can, for example, be the closure of a supplier, disruptions to its own business through no fault of its own, a delay in the delivery of materials or the sub-suppliers' failure to meet agreed delivery deadlines or quality standards. This also applies to circumstances that occur with subcontractors or transport companies of Prufrex's sub-suppliers.
- VII. Should unforeseen obstacles occur during an already existing delay in delivery, Prufrex will no longer be liable for the further delay.
- VIII. If delivery is delayed by more than 4 weeks owing to an unforeseen obstacle, Prufrex is entitled to withdraw from the contract. In such a case, all payments already effected by the Customer will be fully refunded.
- IX. Prufrex can make partial deliveries at any time. This does not apply if the partial delivery appears, upon judicious consideration of the interests of both parties, to be unreasonable in the view of the Customer. Partial deliveries are to be made, if possible, in equal time periods and with equal quantities so that complete delivery is possible within the delivery period. If, despite a corresponding obligation, the Customer does not provide a timely call-order or delivery specification, Prufrex may withdraw from the contract after the unsuccessful expiry of an appropriate deadline it has set.
- X. If the Customer discontinues his payments or if insolvency proceedings are opened in relation to his assets or a judicial or extrajudicial settlement procedure is instigated, Prufrex is entitled to terminate the contractual relationship with immediate effect, without the Customer being entitled to assert any claims for the unfulfilled part.

Section 5 Technical acceptance and documentation

- I. If the goods are to be checked according to specific provisions, this inspection must be carried out in Prufrex's factory – before delivery. The Customer must bear the necessary costs of such an acceptance himself.
- II. The execution of the inspection must be documented by the Customer in writing and countersigned. Prufrex must receive a copy of this documentation.

Section 6 Warranty rights

- I. If an order is placed for DIN-standardised goods, the condition is based on the relevant DIN standards. Complaints are subject to the relevant DIN tolerances.
- II. Depending on the type of product to be delivered, deviations in quantity of up to 10% are permitted.
- III. The Customer's assertion of warranty rights presupposes that he has previously duly fulfilled his duties of inspection and complaint in line with Section 377 HGB.
- IV. Claims for defects expire 12 months after delivery of the goods delivered by Prufrex to the Customer. The statutory limitation period applies to claims for damages in the case of intent and gross negligence as well as injury to life, body and health, which are based on the intentional or negligent breach of duty of the user. The above-mentioned limitation periods do not apply if the Customer has been promised a further guarantee or an extended limitation period in writing.
- V. Should, despite all due care, the delivered goods have a defect that was already present at the time the risk was transferred, Prufrex will, subject to the timely notice of defects, repair the goods or deliver a replacement product. Prufrex must be given an opportunity to effect a remedy within a reasonable period of time. Recourse claims remain unaffected by the above regulation without limitation.
- VI. If the subsequent performance is unsuccessful, if it is impossible or definitively refused by Prufrex, not carried out within a reasonable period of time or is not reasonable for the Customer, then the Customer is entitled to withdraw from the contract or to demand a reduction of the purchase price (reduction). Any further claim for damages remains unaffected by this.
- VII. In the event of supplementary performance, Prufrex is obliged to bear all expenses incurred for the purpose of supplementary performance, in particular transport, travel, labour and material costs, insofar as they are not increased on account of the fact that the purchased item was moved to a location other than the original receiving location, unless the transfer is in line with its intended use.
- VIII. Claims for defects asserted by the Customer are excluded
 - a) in the event of insignificant deviation from the agreed quality;
 - b) in the event of only insignificant impairment of usability;
 - c) in the event of natural wear or tear as in the case of damage arising after the transfer of risk as a result of faulty or negligent handling, excessive use, unsuitable operating resources, poor processing or due to special external influences that are not required or guaranteed under the contract;
 - d) in the event of repair work or changes carried out by the Customer or a third party.

- IX. If Prufrex's Customer can demand reimbursement of his expenses by resorting to the statutory provisions of Section 478 (2) BGB, Prufrex is only obliged to reimburse the amount of the original invoice, meaning it is not obliged to pay any margins or other surcharges.
- X. In the event of the resale of the goods delivered by Prufrex, the Customer undertakes not to extend the rights of his purchaser beyond the legal minimum rights, particularly by means of guarantees. If the Customer has granted his purchaser rights beyond the statutory rights, then he cannot assert them in the case of recourse to the detriment of Prufrex.
- XI. If the Customer is the final business in the supply chain and if he has immediately resold the goods supplied to a consumer, he is obliged to promptly refer the consumer's complaint to Prufrex.

Section 7 Liability and damages

- I. With regard to damage resulting from injury to life, limb or health that is based on a negligent breach of duty by Prufrex or a wilful or negligent breach of duty by a legal representative or vicarious agent of Prufrex, unlimited liability applies.
- II. In the event of any delay in delivery by Prufrex, the extent of liability is limited to 30% of the typical or foreseeable damage in the case of slight and average negligence.
- III. Any claims asserted by the Customer beyond the warranty and damage claims stated herein, on whatever legal grounds, in particular claims on the grounds of interruption of operations, lost profits, consequential damage due to defects, loss of savings, economic losses due to third party claims or other consequential damages shall be excluded, insofar as mandatory liability is not given by virtue of the German product liability law or a warranty or in cases of intent, gross negligence, the absence of guaranteed features or a violation of significant contractual obligations.
- IV. Compensation for the infringement of a fundamental contractual duty is limited to the foreseeable damages typical for the contract, unless it is a matter of intent or gross negligence.
- V. The above-mentioned limitations of liability also apply to breaches of contractual duties committed by the legal representatives, employees and vicarious agents of Prufrex.
- VI. No change of the burden of proof to the disadvantage of the Customer is connected with the above-mentioned regulations.

Section 8 Infringement of property rights and patents

- I. If the product is manufactured in accordance with the Customer's specifications, the Customer is responsible for ensuring that no patents and third-party rights are infringed in connection with his specifications.
- II. Should Prufrex learn, during contract initiation or after contract conclusion, that there is a prospect of such an infringement, Prufrex may withdraw from the contract. In such an event, all the payments already rendered by the Customer will be refunded. In return, Prufrex will be reimbursed by the Customer for all expenses incurred until that point. Insofar as similar payments are concerned, Prufrex has the right to offset.
- III. If claims are asserted against Prufrex by third parties for the infringement of patents or other protective rights, the Customer is obliged to exempt Prufrex from these claims upon first written request.
- IV. The exemption of Prufrex refers to all expenses that necessarily arise from or in connection with the claim asserted by a third party.

Section 9 Retention of title

- I. Prufrex retains ownership of the products supplied until full payment of all the claims arising from the business relationship with the Customer has been effected. This also applies to all samples, models, drawings, illustrations, calculations and other documents furnished by Prufrex within the scope of the order.
- II. In the event of a breach of contract by the Customer, particularly in the event of the default of payment, Prufrex is entitled to reclaim the goods after setting a deadline and the Customer is obliged to surrender them.
- III. Processing or alteration of the goods by the Customer is carried out on behalf of Prufrex. If the reserved goods are processed by Prufrex together with other items not belonging to Prufrex, then Prufrex shall acquire co-ownership of the new item in the proportion of the value of its own items to the other items processed at the time of processing.
The same applies in the event of mixing. If the mixing takes place in such a way that the Customer's item is to be regarded as the main item, the parties agree that the Customer shall assign to Prufrex *pro rata* co-ownership and store the resulting sole or jointly owned property on the behalf of Prufrex.
- IV. As long as ownership has not yet passed to him, The Customer is obliged to handle all products and goods handed over with care. If maintenance and inspection work has to be carried out, the Customer will carry it out on time and at his own expense.

- V. As long as ownership has not yet been transferred, Prufrex must be informed in writing by the Customer without delay if the delivered item is seized or subjected to other interventions by third parties. Insofar as the third party is not able or obliged to reimburse Prufrex for the legal and/or extrajudicial costs of a claim in accordance with Section 771 ZPO (Code of Civil Procedure), the Customer is liable for the damage incurred to Prufrex.
- VI. The Customer is entitled to sell on the reserved goods within the normal course of business.
The Customer now assigns to Prufrex all receivables accruing to the Customer from the resale of the reserved goods to the purchaser in the amount of the agreed final purchase price (including value added tax) of the product.
This assignment applies regardless of whether the purchased item was resold without or after further processing. The Customer remains authorised to collect these receivables even after they have been assigned. The right of Prufrex to collect the receivables itself remains unaffected.
Prufrex undertakes that it will not collect the receivables itself as long as the Customer meets its payment obligations from the proceeds received, is not in default of payment and, in particular, has not filed an application for insolvency proceedings or has ceased making payments. In such a case, the Customer shall, upon request, disclose the receivables assigned and their debtors to Prufrex, provide all the details required for their collection, hand over the associated documents and notify the debtors (third parties) of the assignment.
- VII. At the Customer's request, Prufrex undertakes to release the securities it is entitled to insofar as their value exceeds the claims to be secured from the respective deliveries, orders and replacement claims, insofar as they have not yet been paid, by more than 20%.

Section 10 Non-disclosure

- I. The Customer undertakes to keep all confidential information received within the context of the business relationship strictly confidential and to not disclose it or otherwise make it available to third parties not expressly authorised by Prufrex, and to take reasonable precautions to protect the confidential information; such precautions are, at the very least, the precautions with which the client protects particularly sensitive information about his own business.
- II. Confidential information includes all technical, economic, financial, legal or tax information, or information concerning the business, employees or management or other information (including data, records, and know-how) relating to Prufrex or a company affiliated with Prufrex (in terms of Article 15 AktG [German Stock Corporation Act]) and which are made available to the Customer, its bodies, employees, consultants or other third parties acting on the Customer's part either directly or indirectly by Prufrex or a company affiliated with Prufrex in connection with the business relations of the parties and/or their initiation or which they get to know about in some other way.
- III. Whether and on what medium the confidential information is embodied is irrelevant; in particular, a record must also be made of information transmitted orally.
- IV. The Customer will inform all the people entitled to receive the confidential information about the content and scope of the rights and obligations relating to this non-disclosure agreement and will ensure that all such people comply with these terms.
- V. The Customer will use the confidential information solely for the purposes of the business relationship and/or its initiation with Prufrex.
In particular, the Customer will not use the confidential information to gain a competitive advantage over Prufrex, a company connected to Prufrex or a third party.
- VI. Without being solicited to do so, the Customer will promptly return all forms of confidential information, submitted designs, records, calculations, drawings, templates, illustrations and similar items or records, including all copies thereof, to Prufrex at the end of the business relationship and will fully delete or destroy all stored data.
- VII. The Customer is obliged to immediately return, delete or destroy, before the end of the business relationship, as soon as a corresponding request is made by Prufrex, or if settlement or insolvency proceedings are initiated in relation to the Customer's assets.
- VIII. Upon the written request of Prufrex, the Customer must have the deletion or destruction confirmed by an independent third party.
- IX. The duty to return, delete or destroy does not apply to routinely made backup copies of electronic data traffic, insofar as the storage of the confidential information is required by law.
However, confidential data that is not returned, destroyed or deleted is subject to an indefinite duty to observe secrecy under these non-disclosure provisions.
- X. The Customer shall notify Prufrex in writing and without delay if its institutions, employees or advisors become aware that confidential information has been disclosed in breach of this non-disclosure agreement.
- XI. The Customer will only advertise his business relationship after receiving the prior written consent of Prufrex to do so.
- XII. This duty to observe secrecy does not apply if

- a) Prufrex has given the Customer its prior written consent for the specific individual case of disclosing the confidential information to a third party;
- b) the Customer, his institutions, employees or advisors had already obtained the information from a third party prior to the entering into of this non-disclosure agreement or subsequently obtain it from a third party without breach of this agreement, insofar as the third party lawfully acquired the information and does not violate, through the disclosure thereof, a duty to maintain secrecy that is binding upon him;
- c) the information on the part of the Customer has been drawn up independently of the information provided by Prufrex;
- d) the information was already publicly known at the time it was conveyed by Prufrex or subsequently becomes public knowledge without this non-disclosure agreement being breached;
- e) the Customer has refused to receive the confidential information prior to its transfer and Prufrex has nevertheless provided the confidential information to the Customer;
- f) the Customer is obliged to disclose the confidential information by order of a competent court or authority or other body, or by law, and the Customer must take all reasonable steps to prevent or limit the disclosure of the confidential information to the maximum extent possible.

If the Customer considers himself to be so obligated, he will inform Prufrex in writing, insofar as this is legally permissible, and in good time, prior to publication, so that Prufrex can possibly prevent the disclosure by legal measures. In the notification, the Customer will inform Prufrex in a suitable form, e.g. by providing a written opinion of a legal adviser, which confidential information has to be disclosed and on what legal basis. The Customer will only disclose that part of the confidential information that actually needs to be disclosed.

- g) The Customer bears the burden of proving the existence of these exemptions.
- XIII. For each case of violation of this duty to observe secrecy, the Customer undertakes to pay a contractual penalty of up to €10,000.00; in the event of several infringements the Customer will pay at most, however, a total of €100,000.00, unless he is not responsible for the breach. The actual amount of the contractual penalty shall be determined at the reasonable discretion of Prufrex and, in the event of a dispute, reviewed by the competent court. The assertion of other claims by Prufrex – in particular for compensation – is not excluded by the payment of the contractual penalty; however, the penalty will be offset against the compensation.
- XIV. Besides the assertion of a contractual penalty, Prufrex can withdraw from the contract. In such a case, all payments already made by the Customer will be refunded. In return, Prufrex will be reimbursed by the Customer for all expenses incurred up until that point. Insofar as it concerns payments and expenses of a similar nature, Prufrex has the right to offset these against each other.
- XV. This non-disclosure agreement is valid for the entire duration of the business relationship and/or initiation thereof as well as for 5 years after termination of the business relationship of the parties and/or the failure of the initiation of the business relationship.

Section 11 Compliance

The Customer is obliged to refrain from actions that may lead to criminal liability for fraud or breach of trust, insolvency offences, criminal offences against the competition, the granting of an undue advantage or the bribery of persons employed by Prufrex or other third parties.

In the event of a breach of this provision, Prufrex is entitled to terminate, without giving notice, all contracts that already exist between the parties without the Customer being able to assert claims for whatever reason. In such an event, all payments already made by the Customer will be refunded. In return, Prufrex will be reimbursed by the it concerns payments and expenses of a similar nature, Prufrex has the right to offset these against each other.

Section 12 Export control regulations

- I. The Customer is advised that exporting delivered products that are subject to the Foreign Trade Act (Außenwirtschaftsgesetz) or the US export laws (embargo regulations) is only possible with the consent of the respective authorities.

The Customer is solely responsible for complying with the relevant provisions.

In particular, the Customer must obtain the necessary permits at his own expense and bears the risk in the event they are not granted.

- II. The Customer also assumes liability for the fact that the products delivered are not in accordance with the legal provisions of the destination country. If deliveries are made in accordance with drawings, models, samples or the like provided by the Customer or using parts supplied by the Customer, the Customer shall ensure and vouch for the fact that this does not violate third-party rights. In the event of a claim asserted by third parties for the infringement of such property rights, the Customer must exempt Prufrex from all claims and pay compensation for all costs and damages incurred in this regard, including any legal costs incurred, unless Prufrex, with regard to the infringement of third-party rights, acted deliberately or with gross negligence when delivering the products.

- III. A violation of the Customer's property rights by using a drawing or other information and/or by execution for purposes other than in the Customer's interest can only be cited against Prufrex if the Customer, when surrendering the drawings or other information, referred in writing to the existence of the property rights in detail.

Section 13 Court of jurisdiction and applicable law

- I. For all disputes arising from the business relationship, the parties agree that the court of jurisdiction shall be Fürth in Bavaria, unless otherwise required by law.
- II. The contractual relationships are solely subject to the law of the Federal Republic of Germany.
- III. The provisions of the UN Sales Convention do not apply.

Section 14 Contractual language

- I. The language of the contract is German.
- II. All declarations and agreements made by the Parties to the Contract must be made in German.
- III. Prufrex assumes no liability for any misunderstandings or discrepancies that originate in the fact that the orders and/or instructions given by the Customer not in German are misunderstood, unless the Customer can prove Prufrex is guilty of intent or gross negligence.
- IV. Insofar as these General Terms and Conditions are provided by Prufrex in a version other than German, the German version shall prevail in the event of any objection or other deviations and in the event of a dispute regarding their interpretation.

Section 15 Written form requirement and severability clause

- I. Agreements or amendments to the agreement between the parties must be made in writing. This also applies to the agreement on the written form itself.
- II. Should a provision of these conditions and of the further agreements made be or become ineffective, the validity of the contract and these conditions shall not be affected by this. The Parties to the Contract are obliged to replace the ineffective provision by one which is as similar as possible with regard to its economic success. Until such a provision is agreed, the current legislation applies.

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