

PMPOLAND S.A. TERMS AND CONDITIONS OF PURCHASE

dated 30/07/2018

In these Terms and Conditions of purchase the term:

T&C – means these Terms and Conditions of Purchase

Buyer – means PMPoland S.A. with its registered office in Jelenia Góra (Poland) ul. Fabryczna 1, 58-560 Jelenia Góra registered in the District Court for Wrocław - Fabryczna IX Commercial Department of the National Court Register KRS number 0000033634, NIP: 611-02-02-216, the share capital 13 105 978,00 zł

Seller - means a natural person, a firm, a company or other entity, to which the order is addressed

Goods – means the whole of raw materials, materials, parts, prefabricated elements, products, devices, software, etc. ordered by PMPoland S.A.

Services – means all kinds of service rendered for the benefit of PMPoland S.A. as a result of realization of orders placed by PMPoland S.A.

Order - means the Buyer purchase order to purchase the Goods and/or Services from the Seller;

Agreement - means a written agreement or a purchase order for the Goods and/or Services by the Buyer from the Seller, including any other documents submitted by the Buyer and constituting a part of it, for example any specifications;

Software - means the software built-in into the Goods and supplied as their integral part necessary for the Goods to work;

Force majeure – any external event being beyond the control of the parties, which cannot be foreseen by any party, and having a considerable influence on realization of the purchase order, in particular: war actions, invasions, terrorist acts, embargo for deliveries, strikes, natural disasters, such as earthquakes, flood, fire and others, Acts of God, which could not have been prevented nor with due diligence could have been predicted.

§1 General provisions

1. These T&C (terms and conditions of purchase) are an integral part of all purchase orders placed by the Buyer at the Seller's. Any deviations from these T&C require joint written confirmation by both parties otherwise being null and void. If the Seller does not agree with these T&C he shall be obliged to immediately inform the Buyer in writing. The Buyer reserves himself in such a case the right to cancel the Order. Individual conditions are binding exclusively for this given Order and in no case they can be treated by the Seller, as binding for successive orders from the Buyer. Buyer expressly rejects all conflicting terms contained in an offer, or any Seller general conditions of sale, and any deviations to said conditions cannot be recognized unless agreed to in writing.
2. These T&C are in electronic form and are provided to the Seller prior to Order placement for delivery of the Goods/Services through publication on site http://www.pmpgroup.com/lang/pl/about-us/the_Seller.html or through attaching them to the Order sent to the Seller by the Buyer.
3. Conclusion of sales agreements for Goods/Services shall be based on the Buyer Orders sent to the Seller by e-mail, fax or on printed version.
4. Realization of the Buyer Order should be only based on these T&C, unless other special delivery conditions are specified in the Order.
5. Acceptance of any Order to process should be confirmed in writing by the Seller within 3 days from the receiving date. For written confirmation is considered a paper document, fax or e-mail sent by the Seller to the Buyer. Confirmation of Order means the acceptance of general and specific purchase conditions described in the Order and these T&C. Any deviations to said conditions cannot be recognized unless earlier agreed to in writing.
6. The commencement to processing the Order without written acceptance within the specified deadline means a silent acceptance of general and specific purchase conditions described in the Order and these T&C.

§2 Guarantee and responsibility

1. The Supplier guarantees that the Goods and/or Services provided under this Order are made in accordance with applicable laws and regulations, do not infringe patent rights and other intellectual property rights and are not encumbered with third party rights. If these rights remain violated, and delivered Goods and/or Services will be the subject of a complaint due to violation of these rights, the Supplier will protect the Buyer, by taking appropriate actions and bearing the costs related to these complaints.
2. Seller warrants that all goods delivered and work performed shall respond and will comply with the Order and to Buyer's specifications and drawings, if such documents have been attached to the Order, and also with the Buyer's instructions.
3. The Seller guarantees, that the supplied Goods and/or Services shall be free from material and manufacturing defects, shall be the goods of the highest trade quality and they shall be in accordance with and relevant for the purpose specified in the Agreement or — in case of lack of such information — relevant for the aim, to which such Goods and/or Services are customarily used. For confirmation of the above the Seller shall deliver, together with the Goods or Services, an attestation, a certificate of quality or other quality document agreed upon by both parties.
4. Unless otherwise agreed, the Seller guarantees the quality and performance of the goods delivered or the services rendered for a period of 24 months from the date of start – up or 36 months from delivery whichever occurs first. The Guarantee on the design documentation defects is 5 years from the date of start-up / assembling in a machine.
5. The Seller undertakes, within 1 business day of notification of defects/faults, to undertake activities at its own cost in order to eliminate them. If the Seller does not submit within this period an appropriate program of action, the Buyer has the right to remedy defects / faults at the expense of the Seller, without violating the warranty rights. All Buyer's costs related to defects removal, together with Buyers administration flat-rate cost of handling the complaint in the amount of 75 EUR will be invoiced to Seller.
6. If in the Guarantee period, mentioned in §2 point 4 sentence 2, a specific part of Goods / rendered Services becomes the matter of frequent replacement, then the Seller shall be obliged to modify the design, thus eliminating this problem, if the faults of that part are due to construction defects and life-time of the part is shorter than the declared.
7. The Goods or Services not meeting the requirements specified in the documentation and in the Order, shall not be accepted by the Buyer. The quality defects fund up by the Buyer shall be notified to the Seller in right time after detection. The Seller is obliged to bring the delivery item to a state consistent with the technical documentation and the Order. The Buyer has the right to claim to the Seller the compensation of additional costs borne by the Buyer in relation with Seller's improper delivery, ie. additional quality control costs, costs of delays or disorders in planned workshop flow. The Buyer also reserves the right to make necessary repairs on his own at the expense of the Seller without setting the deadline for removal of defects if faulty delivery is extremely urgent for further processing and/or assembly and failure to do so could cause additional, high costs.
8. Seller accepts the deduction from Seller's receivables, the costs born and documented by Buyer, covering the repairs performed by Buyer as specified in points 5 and 7 of this paragraph. Additionally Seller accepts the subtraction made by Buyer from Seller's due remuneration, amounts related to the penalties as per paragraph 2 point 5 and paragraph 3 point 2.
9. The Seller guarantees, that all the Goods supplied in this Order meet the requirements of the European Union, specified in relevant basic directives:
2006/42/WE - Safety of Machinery Directive,
2006/95/WE - Low Voltage Equipment Directive,
2014/35/EU- Low Voltage Directive,
2014/30/WE - Electromagnetic Compatibility Directive,
2014/29/UE - Simple Pressure Vessel Directive,

2014/68/UE - Pressure Equipment Directive, together with later amendments and modifications and the requirements of any other European Directives, if such should be applied for the product.

To confirm meeting of these requirements the Seller shall deliver together with the product a copy „conformity declaration“ issued according to the requirements of EN ISO/IEC17050. In cases specified by the above mentioned directives, the Goods should be marked with the conformity mark „CE“, whereas the placement of this mark „CE“ on a product may be done after fulfillment of the relevant directive requirements and after issuance of the said conformity declaration.

§3 The term and delivery conditions

1. The agreed delivery term in the Order is binding and is understood as the term of the Goods or Services delivery to the Buyer's place or in other location agreed upon between the Buyer and the Seller. The Seller cannot suspend or delay the Delivery of any the Goods nor Services rendering.
2. Time is essence in performance of this Order. Where delivery dates are specified herein failure to deliver in accordance with them shall constitute breach of this Order unless such failure resulted from an unforeseen event beyond Seller control (Force Majeure). In case of delivery delay Seller will pay a penalty of 5% of the Order value per each week began of delay but maximum 20%. Buyer reserves the rights to require from Seller the compensation exceeding the amount of penalties agreed.
3. Goods/Services will not be accepted by Buyer if they do not exactly match the requirements given in the drawings or descriptions, if they do not match with technical data, or made of inadequate material, or will be incorrectly performed.
4. The Goods which are not accepted (rejected) shall be returned to the Seller or shall remain at the Buyer's place or in other place of delivery at the Seller's risk and cost.
5. The Delivery is full and complete if the supplied materials, Goods have the required attestations, material certificates (for example acceptance certificate PN- EN 10204 3.1), instruction manuals in the language specified in the Order and other mentioned documents. Failure to deliver the required documents will be treated as a delay in delivery and will be punished in accordance with item 2 of this paragraph.
6. Buyer reserves the rights to conduct the goods inspection and testing at Sellers site at any stage of manufacturing and before shipment to the Buyer.
7. One week before the planned shipment the Seller shall send the notification of readiness to acceptance to the Buyer, the notice should contain: Order No, delivery subject, weight, number of pieces, the receipt/delivery term.
8. Unless otherwise agreed, the Goods purchased by the Buyer shall be, after re-making, designated for export. In order to issue the Certificate of origin for the final customer, the Buyer requires from the Seller to send the declaration of the origin together with the Goods (legal basis: The EU Customs Code and European Parliament and Council Regulation (UE) No 952/2013 of 9 October 2013). If Seller do not provide the required declaration on the invoice or in a separate form with the delivery, the Goods will not be accepted by the Buyer, which will delay the payment deadline and will be treated as a delay in delivery.
9. Goods and services supplied to the Buyer should comply with environment protection in regard to product and packaging. Wood packaging material in international trade should comply with IPPC- ISPM 15 standards (International Plant Protection Convention –International Standards For Phytosanitary Measures), if the country of import requires it.
1. The Goods shall be supplied, and the Services shall be rendered in working hours of the Buyer, unless the Buyer has specified other hours. The Buyer shall have a suitable time for inspection or making trials of the Goods and/or Services and for notifying any defects to the Seller.

§4 Payment and invoices

1. Buyer Order prices are final and no extra charge may be added for advanced costs of material, labor or other circumstances without the Buyer's written consent.
2. Payments will be made in the currency agreed in the Order.
3. The invoice issued by the Seller must contain the Buyer's Order number and is subject to financial control by the Buyer in accordance with the following rules:
 - a) conformity of the invoice value with the amounts established in the Order
 - b) conformity of delivery time and terms
 - c) conformity of payment terms and due dates
 - d) compliance of the goods delivered with the quality requirements - declarations, attestations, certificates and / or other quality documents specified in Order
4. In case of essential discrepancies the Buyer reserves the right to send the invoice back to Seller without entering it into the register and to require necessary correction.
5. All payments shall be made on condition, that the rendered Services or supplied Goods are free from physical and legal defects and the delivery is full and complete. In the case of detection by the Buyer and immediate notification to the Supplier about quality defects in the delivered Goods or in the performed Service and / or lack of required documents, the Buyer has the right to suspend partially or completely payment for the Goods or Service until removal of defects in delivery and / or delivery of missing documents, or to reduction the amount due by the costs of self removing the defects.
6. The invoice payment will be performed by wire transfer in due date agreed in the Order, counting from the date of complete delivery received by Buyer, or performed to other place indicated in the Purchase Order. If the commercial invoice is received after complete delivery of the goods, the payment will be effected according to the terms stipulated in the Purchase Order, counting from the date of invoice receiving by Buyer.
7. The property right of the Goods is transferred to the Buyer in the delivery time. In case the Goods contain the software, the property right of such Software shall not be transferred to the Buyer, however the Seller shall grant or — dully — ensure, that the owner being the third party shall grant the Buyer and all the users obligatory in the whole world, irrevocable, eternal, transferable, non-exclusive, gratuitous right to use the Software as integral part of the Goods or for purpose of servicing the Goods.

§5 Other provisions

1. In case of Order withdrawal by one Party, due to the reason not attributable to the other Party, the withdrawn Party should pay back all costs born and documented by the other Party. It is unacceptable to withdraw from an Agreement by the Seller due to reasons depending from him after more than 14 days from receiving the Order from the Buyer. In case of such withdrawal the Seller shall pay the Buyer compensation according to general provisions.
2. Quotations, Orders, correspondence, specifications, drawings, designs, plans and sketches submitted by the Buyer to the Seller, and the information contained therein, and information otherwise submitted to the Seller shall remain the property of the Buyer. The Seller undertakes to keep confidential the above information, and not to disclose it to any third party without the Buyer's written consent, except and to the extent, as may be necessary for proper performance of the Order and then-only subject to the recipients giving similar undertakings of confidentiality and non-disclosure. The Seller shall not use the Buyer's confidential information for any purpose other than the delivery of the Goods and/or the provision of the Services or shall not reproduce and copy this information in whole or in part, in any form, except as provided in the Agreement. Nothing contained above shall apply to any information :
 - a) in Seller's possession prior to receipt from Buyer, or
 - b) which Seller may receive from a third part, or
 - c) which is, or later becomes, public knowledge other than by breach of this clause.
3. At any time before or after termination of Buyer's business contacts with Seller, within ten (10) days after Buyer's written request, Seller shall return all information in written, printed, electronic or tangible form, and all copies thereof; it being understood, however, that such termination shall have no effect on Seller's continuing obligations regarding confidentiality of information received from the Buyer. Seller, after the completion of the Order, definitively destroy any information, documentation, instructions, procedures howsoever received from the Buyer, including, without limitation, in electronic format, and will confirm it to the Buyer by official statement.

4. The Seller is responsible for control and management of all his staff, sellers or subcontractors, as well as for their actions or omissions just like for his own actions or omissions.
5. Without prejudice to obligatory law regulations the Seller, without any limitations, shall keep harmless from responsibility and shall exempt the Buyer from responsibility in case of any liability, compensation, cost, losses or expenses incurred by the Buyer as a result of violation of an Agreement by the Seller.
6. In the matters not governed by these T&C the relevant rules of Polish Civil Code shall be in use.
7. All disputes and possible disputes regarding the execution of this Order will be settled amicably, and if this is not possible, the dispute will be resolved by the court competent for the Buyer's registered office. Both to the Order and to the agreement concluded between the parties apply Polish substantive and procedural law, The application of the United Nations Convention on Contracts for the International Sale of Goods drawn up in Vienna on 11 April 1980 is excluded.
8. This Agreement constitutes the wholeness of Agreement between the Parties and replaces any and all earlier agreements between the Parties as regards to its matter.