

# General Terms and Conditions : PROJAHN Präzisionswerkzeuge GmbH

Valid since september 14<sup>th</sup> 2009. All beforegoing General Terms and Conditions herewith lose their validity.

Please be advised that below General Terms and Conditions are a translation of the German General Terms and Conditions.

German General Terms and Conditions are valid even for international business.

## 1. General

- 1.1 Our deliveries, services and offers are made exclusively on the basis of these terms and conditions, which will also apply to all future business relations even if they are not expressly agreed anew. These terms and conditions are considered agreed upon receipt of the goods or services at the latest. Counter-confirmations on the part of the purchaser with reference to the purchaser's own terms of business or purchase are hereby rejected.
- 1.2 All agreements made between the purchaser and ourselves for the purpose of performance of this contract must be recorded in writing.

## 2. Place of Performance, Passing of Risk, Insurance

- 2.1 The place of performance for delivery and payment is Dietzenbach.
- 2.2 The risk passes to the purchaser as soon as the consignment has been transferred to the person carrying out the transportation or as soon as it has left our warehouse for the purpose of dispatch. If the dispatch is delayed at the purchaser's request, the risk passes to the purchaser on notification that the consignment is ready for dispatch.

## 3. Offers and Prices

- 3.1 The presentation of our goods on the internet or in the catalogue does not constitute an offer to which we are bound. It is an invitation to our customers to make us a binding offer.
- 3.2 The order placed by our customer represents a binding offer to conclude a contract of sale relating to the ordered goods. Insofar as we acknowledge receipt of the order, this does not represent binding acceptance of the order.
- 3.3 The contract of sale is brought about only when we forward a binding order confirmation to the purchaser or send the ordered goods to the purchaser.
- 3.4 If we submit an offer, it is non-binding and without engagement. Declarations of acceptance and all orders require our confirmation by letter or by written telecommunication to attain legal validity.
- 3.5 We reserve the right to change prices and to make technical modifications. The images of our products in the catalogue and on the internet are not binding. Furthermore, no liability for printing errors is accepted.
- 3.6 The price list valid on the order date applies.
- 3.7 The prices are subject to VAT at the respective statutory rate.
- 3.8 The catalogue indicates the packaging units corresponding to the respective products. The packaging units are the minimum purchase quantity. If an order for a reduced quantity is placed, we increase the order automatically to the relevant packing unit. This procedure does not require the orderer's express consent.

## 4. Shipping Costs

- Unless agreed otherwise, the following applies:
- 4.1 Our prices are "ex works", excluding packaging.
  - 4.2 From a net order value of Euro 250.- upwards, we deliver free domicile within Germany, including packaging.
  - 4.3 The minimum order value for export orders is Euro 500.- net.
  - 4.4 A mark-up of Euro 5.00 is charged for orders from domestic customers with a net order value of less than Euro 50.-.

## 5. Delivery and Performance Time

- 5.1 Delivery dates or delivery periods, which may be agreed on a binding or non-binding basis, have to be stated in writing.
- 5.2 We cannot be held responsible for delays in delivery and performance due to force majeure and events which significantly impede or render delivery by us impossible, not merely on a temporary basis – including, in particular, strikes, lockouts, official rulings etc., and inclusive of such events affecting our suppliers and sub-suppliers, even in case of bindingly agreed dates and deadlines. They entitle us to postpone delivery or performance for the duration of the hindrance plus a reasonable lead time, or to withdraw from the contract in whole or in part on account of the part not fulfilled. If the hindrance lasts longer than three months, the purchaser is entitled to withdraw from the unfulfilled part of the contract after having granted a reasonable extension of time. If the delivery period is prolonged or if we are released from our obligations, the purchaser cannot derive any claims for damages from this. We will only have the right to plead the aforementioned circumstances if we have notified the purchaser promptly.
- 5.3 We are entitled to make partial deliveries and render partial performance at any time unless the purchaser excluded partial delivery or partial performance when the contract was concluded.
- 5.4 The adherence to the delivery and performance duties on our part presupposes the punctual and orderly fulfilment of the purchaser's obligations.
- 5.5 If the purchaser defaults on acceptance, we are entitled to claim compensation for the damage or loss we incur. We are entitled to claim liquidated damages for non-fulfilment to the amount of 15% of the agreed purchase price unless the purchaser proves that the damage or loss we incurred is lower or we prove that the damage or loss is higher.
- 5.6 Upon default of acceptance the risk of accidental deterioration and accidental loss passes to the purchaser.

## 6. Special Tools

If we accept an order for special tools and confirm it in writing, we are entitled to deliver a reasonably higher or lower number of units.

## 7. Warranty, Notification of Defects

- 7.1 Immediately after the goods we deliver have arrived at their destination, they have to be inspected and handled with the due care and diligence of a prudent businessman. If the goods are not inspected, we cannot be held liable for any defects. This applies analogously if defects identifiable at a later stage are not promptly notified. We are to be notified of any defects in writing, at the latest within 8 days from receipt of the goods.
- 7.2 Defects of quality are constituted only if the defects exist at the time of delivery. Therefore defects of quality are not constituted if the complaints can be put down to unsuitable or improper use of our tools, natural wear, faulty or negligent handling, excessive workloads, the use of unsuitable

operating resources, as well as chemical, electrochemical or electrical influences, insofar as the usability under corresponding special conditions was not agreed.

- 7.3 If defects of quality are constituted, we have the right to choose whether the supplementary performance takes the form of rectification or replacement. We also have the right to issue a commensurate credit note for the article supplied.
- 7.4 The buyer is not entitled to base a rescission on claim on defects of quality which only insignificantly reduce the value or fitness for use of the goods.

## 8. Terms of Payment, Default in Payment

- 8.1 Payment will be deemed to have been made only when the sum is at our disposal. In the case of cheques, payment will be deemed to have been made only when the cheque has been cashed.
- 8.2 For payments within 8 days from the date of invoice (receipt on the account) we grant a 2 % discount.
- 8.3 We are entitled, notwithstanding any purchaser's stipulations to the contrary, to post payments first against the purchaser's older debts. We will inform the purchaser of the nature of this settlement. If costs and interest have accrued, we are entitled to post the payment first against the costs, then against the interest and finally against the principal debt.
- 8.4 The purchaser will be in default on the 30th day after the date of invoice, without a separate notice of default having to be served. In case of default in payment, the unsettled claim bears interest at the rate of 8 percentage points above the respective base rate. The interest is to be set at a lower rate if the purchaser provides evidence of a lower burden. It is admissible for us to produce evidence of higher loss.
- 8.5 The purchaser does not have the right to offset, retain or reduce payments, even in the event of complaints or counterclaims, unless we expressly agree to such or the counterclaims have been res judicata or are undisputed. The buyer has a right of retention only due to counterclaims under the same contractual relationship.

## 9. Reservation of Title

- 9.1 The goods supplied remain our property until settlement of all claims (including all current account balance claims) to which we are entitled from the purchaser on any legal grounds, now or in future.
- 9.2 The goods subject to retention of title may be sold by the purchaser in the ordinary course of business as long as the purchaser is not in default. Pledging or transfer of ownership by way of security is inadmissible. The claims (including all current account balance claims) accruing from the resale or on any other legal grounds (insurance, tort) with respect to the goods subject to retention of title are herewith assigned to us in their entirety by the buyer by way of security. We revocably authorize the purchaser to collect the claims assigned to us, for his account and in his name. This authorization for collection can be revoked only if the purchaser does not duly fulfil his payment obligations.
- 9.3 If a third party attempts to seize the goods subject to retention of title, in particular in case of attachment, the purchaser will draw attention to our ownership and notify us without delay so that we are in a position to enforce our title. If the third party is not in a position to reimburse us for the court and out-of-court costs incurred in this connection, the purchaser will be liable for them.
- 9.4 In case of breach of contract by the purchaser – in particular, default in payment – we are entitled to withdraw from the contract and to demand the return of the goods.

## 10. Limitation of Liability

- 10.1 Claims for damages are excluded, irrespective of the nature of the breach of obligations, including tort, unless deliberate or grossly negligent acts are involved.
- 10.2 In case of breach of fundamental contractual obligations, we are liable for every act of negligence, but only to the extent of the foreseeable damage or loss. Claims for loss of profit, saved expenditure, third-party claims for damages, and other indirect and consequential damage cannot be made unless a quality feature we guarantee has the express purpose of protecting the purchaser from such damage or loss.
- 10.3 The limitations and exclusions of liability set forth in paragraphs 10.1 and 10.2 do not apply to claims arising as a result of fraudulent conduct on our part, nor to liability for guaranteed quality features, claims under product liability law or damage resulting from injury to life, body and health.
- 10.4 To the extent that our liability is excluded or limited, this also applies to our employees, representatives and persons we engage for fulfilling our obligations.

## 11. Protection of Data Privacy

We store and process personal and company-related data as far as is necessary for executing the orders and as far as is admissible under the German Federal Data Protection Act (BDSG).

## 12. Applicable Law, Legal Venue, Severability

- 12.1 All legal relations between the purchaser and ourselves are governed by the laws of the Federal Republic of Germany to the exclusion of the provisions of the United Nations Convention on Contracts for the International Sale of Goods.
- 12.2 The legal venue for all disputes arising directly or indirectly from the contractual relationship is our principal place of business. We have the right to also assert claims at another place of jurisdiction.
- 12.3. Should any one of the above provisions be inoperative, the validity of the other provisions will remain unaffected. The provision concerned is to be replaced by an operative one that most closely resembles the economic intent of the original provision.

**PROJAHN**<sup>®</sup>  
Präzisionswerkzeuge

gute Werkzeuge – gute Arbeit  
good tools – good job

**AGB**