

## General Terms and Conditions of Purchasing and Ordering



Applies for all contractual relationships between Companies, legal entities (hereinafter referred to as "Supplier") and the PTC Corporate Administration GmbH, PTC Rail OEM GmbH, PTC Rail Services GmbH (hereinafter referred to as "Purchaser").

### 1. Applicable Terms

- 1.1 The legal relationship between the Supplier and the Purchaser shall be governed exclusively by the following Terms and Conditions of Purchasing and Ordering (hereinafter "Terms"). Any different, contrary or additional terms of the Supplier are excluded and hereby expressly rejected by Purchaser. Any different, contrary or additional terms of the Supplier shall become an integral part of the contract only if and to the extent that the Purchaser has given explicitly a written approval of their validity.
- 1.2 This requirement for approval shall apply in every case, for instance even if the Purchaser executes the contract unconditionally while being aware of the Supplier's terms. The unconditional acceptance of goods or services (hereinafter referred to consistently as "goods/services") or undisputed payment by the Purchaser in particular shall not constitute acceptance of the Terms and Conditions of the Supplier.
- 1.3 The Terms shall also apply for all future transactions of this kind with the Supplier.

### 2. Ordering

- 2.1 All contracts for delivery (purchase orders and confirmations) and release orders shall require the written form. Purchase and release orders may also be sent in text form (fax, e-mail, EDI, Web EDI).
- 2.2 ANY VERBAL AGREEMENTS AFTER CONCLUSION OF THE CONTRACT OR ANY COLLATERAL AGREEMENTS REQUIRE THE WRITTEN CONFIRMATION OF THE PURCHASER.
- 2.3 Any cost estimates shall be binding and free of charge.
- 2.4 The Purchaser may demand reasonable changes/variation to the object of performance in terms of design and construction. The consequences, in particular with regard to additional or reduced costs and delivery dates, shall be regulated appropriately and by mutual agreement.
- 2.5 Should the Supplier fail to accept an individual order within two weeks of the order date, the Purchaser shall be entitled to cancel the order.
- 2.6 Should these Terms be integrated into a framework agreement, an individual contract that is based on this framework agreement also comes into existence if the Supplier does not object immediately and justifiably; the date stated in the release order shall be met.
- 2.7 THE PURCHASER'S "QUALITY -Assurance-Agreement" SHALL BE AN INTEGRAL PART OF THE DELIVERY CONTRACT.

### 3. Prices, Payment

- 3.1 For the term of the contract, the agreed prices (according to the currently valid price table) in accordance with Incoterms 2020 shall apply.
- 3.2 Without special agreement, all prices for deliveries are FCA "Free Carrier" (according to Incoterms 2020) including packaging. Should the Supplier undertake installation or assembly, he shall, failing a written agreement to the contrary, bear all necessary additional costs.
- 3.3 Unless otherwise agreed, the Purchaser shall pay within 60 days after the payment due date and after receipt of a due invoice as well as receipt of the goods/services. ANY PAYMENT IS SUBJECT TO INVOICE VERIFICATION.
- 3.4 Should early delivery of the goods and services (hereinafter referred to as "consignment") be accepted, any claim for payment shall become due not earlier than on the agreed date of payment, in case of doubt not earlier than the agreed delivery date. In case of a faulty or incomplete delivery (delivery of only a part of the order and confirmed products) the Purchaser is entitled to demand payment back after consultation with the supplier until proper fulfilment.
- 3.5 Purchaser reserves the right to assert claims for reimbursement of expenses, in particular for storage costs.

### 4. Delivery and Delivery Dates, Late Delivery, Penalty

- 4.1 Any agreed delivery dates and terms shall be binding. Decisive for on-time delivery shall be the date the goods are received at the delivery address (place of performance) agreed with or designated by the Purchaser. Failing an agreement to the contrary, delivery shall be made FCA "Free Carrier" (according to Incoterms 2020). In all other respects the Supplier shall coordinate delivery with the carrier of the Purchaser.
- 4.2 Partial deliveries and early deliveries are not permitted unless expressly agreed to in writing by the Purchaser.
- 4.3 Acceptance of late deliveries without reservation shall not be deemed to be a waiver of any claims to which the Purchaser is entitled due to late delivery.
- 4.4 Should the agreed delivery dates not be met, the statutory provisions shall apply. Should the Supplier anticipate difficulties that may prevent him from delivering on time or in the agreed quality, he shall notify the Purchaser thereof immediately, stating the reasons. IN ADDITION, IN CASE OF FAULT OF THE SUPPLIER THE PURCHASER SHALL BE ENTITLED TO DEMAND PAYMENT OF LIQUIDATED DAMAGES AMOUNTING TO 0.5% OF THE VALUE OF THE LATE GOODS/SERVICES PER STARTED WEEK OF DELAY UP TO A MAXIMUM OF 5% OF THE ENTIRE VALUE OF THE ORDER. THE LIQUIDATED DAMAGES SHALL BE SET OFF AGAINST ANY CLAIMS FOR DAMAGES DUE TO LATE DELIVERY. THE LIQUIDATED DAMAGES MAY BE ASSERTED UNTIL THE AGREED PRICE HAS BEEN PAID IN FULL.
- 4.5 The Supplier shall bear the performance risk until acceptance of the Purchaser or his agent at the location, to which the goods shall be delivered in accordance with the contract. Supplier guarantees a complete outgoing goods inspection to ensure delivery with zero-defect quality and inspects the goods to an extend agreed between Purchaser and Contractor based on the technical specification.
- 4.6 An incoming goods inspection shall only be carried out with regard to externally recognizable damage and/or deviations in identity and quantity. The Purchaser shall give notice of such defects without delay. Further defects shall be notified as soon as they are detected in the ordinary course of business. In this respect the supplier waives the objection of delayed notification of defects
- 4.7 The Purchaser shall have the unrestricted, irrevocable and within the Purchaser companies freely transferable right to use any software included in the scope of delivery, including any attendant documentation, in accordance with the intended use of the goods/services under the contract. He may also make a safety copy thereof without any express agreement.
- 4.8 If required and on demand of the Purchaser, the parties will agree to the establishment of a consignment warehouse.

### 5. Secrecy

- 5.1 All information made accessible by the Purchaser shall be kept secret from third parties as long as and to the extent that it is not demonstrably publicly known. They shall remain the exclusive property of the Purchaser and shall only be made available in the Supplier's business to persons who must necessarily be consulted for the purpose of delivery to the Purchaser and who are also obliged to maintain secrecy. Without the prior written consent of the Purchaser, such information - except for deliveries to the Purchaser himself - may not be reproduced or used commercially. At the request of the Purchaser, all information originating from him, regardless of its form or embodiment, shall be returned to him immediately and completely or destroyed, together with a corresponding written declaration.
- 5.2 The Buyer reserves all rights to such information (including copyrights and the right to register industrial property rights). Insofar as the Purchaser has received such information from third parties, this reservation shall also apply in favor of these third parties.
- 5.3 Products manufactured according to documents designed by the Purchaser, such as drawings, models and the like, or according to his confidential information or with his tools or copied tools, may not be used by the supplier himself or offered or delivered to third parties. This shall also apply mutatis mutandis to print orders.
- 5.4 The contracting parties may only advertise their business relationship with the Buyer with prior written consent.

### 6. Inventions, Industrial Property Rights

- 6.1 The Supplier hereby grants the Purchaser a free, transferable right of use without restriction as to territory or time in any know-how and inventions of the Supplier that are capable of being protected and on which the goods/services are based or in which these are embodied, or which have come into being through development processes during the contractual relationship. The Supplier shall organizationally ensure that he can meet his obligation to grant the right of use.
- 6.2 THE SUPPLIER IS AWARE THAT THE PRODUCTS OF THE PURCHASER ARE BEING USED WORLD-WIDE. HE UNDERTAKES TO IMMEDIATELY NOTIFY THE PURCHASER OF ANY USE OF PUBLISHED AND UNPUBLISHED, OWN AND LICENSED INDUSTRIAL PROPERTY RIGHTS AND PATENT APPLICATIONS REGARDING THE GOODS/SERVICES.

### 7. Packaging, Delivery Note, Invoice, Country of Origin of Goods

- 7.1 The goods shall be packaged according to the provisions of the packaging handbook of the Purchaser.
- 7.2 The Purchaser shall be provided with a delivery note and a separate invoice regarding each consignment. These must contain the Supplier number, date and number of the order and/or release order and purchase agreement, quantity and material number, the custom tariff classification code (HS-Code) and the country of origin, number and date of the delivery note, gross and net weights listed separately, additional data of the Purchaser (e.g. point of discharge) as well as the agreed price per unit. A packing slip with a list of contents and order number must be enclosed with each consignment. If the invoice relates to different orders, the information given in this Clause shall be listed separately for each order. The invoice may only refer to the delivery note.
- 7.3 A supplier whose place of business is in the European Union shall, upon request, provide the Purchaser with long-term Supplier's declarations (LZLE) for goods with preferential originating status in accordance with Regulation (EC) 1207/2001VO (EU) 2015/2447, which contain or enable a statement of the country of origin and a recoding to the Purchaser's material number. The Supplier is obliged to hand over an information sheet (INF 4) for verification or authenticity check of the Supplier's declaration by the customs authorities at the request of the Purchaser. A supplier with a place of business outside the European Union must enclose the necessary preference documents (e.g. Form A, EUR-1, EUR-MED, A.TR.) with each order for goods with preferential origin and, on request, provide evidence of the commercial origin of the goods by means of an official certificate of origin.
- 7.4 The Supplier must comply with all national, European and international customs regulations concerning goods and services. Supplier acknowledges that the Goods / Services or parts thereof are subject to export control regulations and ordinances and warrants compliance with applicable export control laws and regulations (including US regulations). At the time of acceptance of the Order, Supplier shall identify the part of the Goods and Services that is subject to export control regulations and shall provide all relevant export control information, including the classification according to the Export List, for all Goods and Services. This includes the obligation to indicate on all delivery bills the correct export control classification number (including US, EAR or ITAR classification) and the number or reference of an applicable export license and any distribution restrictions. In the event of a change in the respective export control regulations or the classification according to the export list, Supplier shall inform Buyer accordingly in writing. Supplier shall be responsible, at its own expense, for the timely issuance of all necessary governmental export licenses, permits, consents and clearances required to ensure that (i) all Goods and Services to be supplied are used by Purchaser in accordance with the Purchase Order and (ii) delivery to Purchaser is made at the agreed time. In case of an existing export license, Supplier shall provide Buyer with a copy of this document containing all relevant information and reservations, in particular, but not limited to, with respect to re-export.

#### 8. Cancellation

- 8.1 In the event of partial or complete cancellation of quantities still to be delivered by the end customer, the purchaser reserves the right to cancel delivery calls. of delivery call-offs. The Purchaser can also make use of the right of cancellation if other conditions, for which it is not responsible, make the continuation of the contract impossible. In the event of cancellation by the Purchaser, the Supplier's verifiable expenses incurred up to the time of cancellation will be charged. Lost profit will not be compensated.
- 8.2 Any Force Majeure event, strikes or lockouts, pandemic, disruption of operations through no fault of his own, riot; official governmental actions and other unavoidable events entitle the Purchaser - irrespective of his other rights - to withdraw from the contract in full or part, provided these events result in a significant reduction of his needs and last for a significant period of time.

#### 9. Liability for Defects

- 9.1 Supplier shall be liable for personal injury, property damage and financial losses for which it is responsible in accordance with the statutory provisions, unless otherwise provided.
- 9.2 The Purchaser may choose the manner of subsequent performance.
- 9.3 Should the Supplier fail to start immediately with the repair of the defect within a period to be determined by the Purchaser, the Purchaser shall be entitled at the Supplier's expense to carry out the repair himself or have it carried out by a third party. Should the Purchaser, due to special urgency and in particular in defense against impending risks and/or substantial damage, be unable to notify the Supplier of the defect and the impending damage and to set a time limit, he shall be entitled to remedy measures without setting a time limit.
- 9.4 The warranty shall expire 24 months after ultimately being put into service by the end Purchaser, at the latest, however, 36 months after delivery to the Purchaser.
- 9.5 For parts of the delivery repaired or subsequently delivered within the period of limitation, the period of limitation shall begin anew upon complete subsequent performance and shall end no later than 24 months after the first subsequent performance, even in case of the same renewed defect.
- 9.6 The Supplier guarantees that a specific good/service will not have a serial defect for a period of 48 months after delivery. A serial defect shall exist if the Purchaser and the Supplier jointly determine based on the type of damage and the cause of damage that a damage may occur in all delivered goods/services of the same product or a certain quantity of the delivered series of goods/services (batch). Nonetheless, a serial damage shall exist if the same damage is determined during the warranty period in at least 2% of all delivered goods/services of the same product or a certain quantity of the series of goods/services (batch). To calculate the damage rate, all similar damages shall be considered with respect to the type of damage and/or the cause of damage that are determined within a period of maximum 48 months from the occurrence of the similar damages.
- 9.7 The Supplier shall bear the costs incurred by the Purchaser due to defective delivery of the goods/services, in particular costs for handling, transport traveling, labor, material, installation and modification, recall costs together with preventative exchange costs, costs for an incoming goods inspection that exceeds the ordinary scope as well as costs the Purchaser has to bear for his Purchasers due to statutory obligations.
- 9.8 In the event of a recall, the supplier shall reimburse the Purchaser for all costs necessary to remedy the defect. This shall in particular also include the expenses listed in items (3.2) and (3.3). To the extent that third parties or the Purchaser have contributed to the cause of the recall, the supplier shall only owe pro-rata compensation for costs in the amount of his share of the cause. Within the scope of a recall, however, even defect-free products shall be preventively exchanged at the Supplier's expense. In addition, the Purchaser is entitled to demand reimbursement from the supplier of all necessary expenses and costs, including the charges of the Purchaser of the Purchaser. The assumption of costs for financial losses shall take place within the scope of the valid Public liability insurance.
- 9.9 In the event of culpable defects of title, in particular also in the event of infringement of 3<sup>rd</sup> party industrial property rights, the Supplier shall indemnify the Purchaser and its Purchasers against third party claims and shall reimburse the costs incurred by the Purchaser for a necessary and appropriate rights defense in connection with the infringement of 3<sup>rd</sup> party rights. A limitation period of 2 years from § 438 para. 1 BGB shall apply to defects of title.
- 9.10 Should the Purchaser take back any products manufactured and/or sold by him due to defects of the goods/services delivered by the Supplier or should the remuneration of the Purchaser have been lowered or shall claims be made on him in other ways, the Purchaser reserves the right to recourse against the Supplier.

#### 10. Other Liabilities

- 10.1 Should the Purchaser be subjected to product liability claims, the Supplier shall indemnify him insofar and to the extent that the damage was caused by a defect of his goods/ services. However, in case of tortious liability this shall only apply if the Supplier is at fault. The Supplier shall bear the burden of proof, provided the cause of the damage lies within the scope of his responsibility. In these cases, THE SUPPLIER SHALL BEAR all costs and expenses, including the COSTS for bringing an action.
- 10.2 THE SUPPLIER UNDERTAKES TO TAKE OUT AND PROVE THAT HE IS COVERED BY PUBLIC LIABILITY INSURANCE for damages under extended product liability as well as for the costs of any recall action, such insurance to be taken out with a certified insurer within the EU. The sum insured shall be no less than EUR 5 million each for personal injury, property damage and extended product liability and recall costs. The conclusion of a product liability insurance policy is intended to protect the supplier from liability risks but does not allow his liability to expire if the insurance does not pay for the liability damage.
- 10.3 The Supplier shall be liable for measures taken by the Purchaser in defense against damages (e.g. recall action) insofar as he is obligated to do so under the law and/or contract.

#### 11. Third Party Industrial Property Rights

- 11.1 The Supplier warrants that no third-party industrial property rights are in conflict to the contractual use of the goods/services.
- 11.2 Insofar as the Supplier is at fault for the infringement of industrial property rights, he shall indemnify the Purchaser from all third-party claims made against him in and out of court, including any costs incurred by the Purchaser for a necessary and appropriate legal defense resulting from an infringement of industrial property rights.
- 11.3 Furthermore, the contracting parties shall notify each other immediately of any infringement risks and alleged cases of infringement and shall afford each other the opportunity to jointly counteract any corresponding claims.

#### 12. Assignment and Set-Off

- 12.1 The Supplier may not assign his claims against the Purchaser nor have these collected by third parties without prior written approval, which may not be refused unreasonably. The Purchaser may withhold or set off payments based on his counterclaims.

#### 13. Retention of Title

- 13.1 The products delivered by Supplier shall remain its property until payment has been made and may only be used for the intended purpose. The Purchaser shall be entitled to process the products and to assemble parts as well as to resell them. The supplier shall be co-owner of the products manufactured using his materials and parts in the ratio of the value of the products delivered to the value of the total product until full payment has been made. This shall not apply in the event of resale.
- 13.2 Any extended or expanded reservation of title by Supplier shall require an express separate agreement in order to be effective.
- 13.3 Any materials provided by the Purchaser shall remain his property and may only be used for the intended purpose. Any processing of materials and assembly of parts is carried out on behalf of the Purchaser. The Purchaser shall have co-title in the products manufactured using his materials and parts in proportion of the value of the materials provided by him to the value of the overall products, which the Supplier shall keep for him.

#### 14. Quality and Documentation

- 14.1 The Supplier shall meet state-of-the-art of science and technology standards, safety provisions and agreed technical specifications for his consignments. For this purpose, he shall establish an appropriate quality management and provide evidence thereof without explicit request by Purchaser.
- 14.2 The Supplier shall record in his quality documentation for all products, when, how and by whom a quality inspection ensuring defect-free production was carried out. These records shall be kept for 15 years as of the last time the Purchaser placed the final product on the market and shall be provided to the Purchaser if required. The Supplier shall be entitled to shorten the retention period if he can exclude any risk to life and health in the use of the products. Sub-supplier shall be obliged by the Supplier to the same extent within the limits of law.
- 14.3 Furthermore, reference is made to clause 2.7 with regard to quality and documentation.
- 14.4 Substances and preparations that are banned or subject to declaration according to the Black List for banned input substances and the Grey List for declarable substances shall be listed and labelled accordingly. The Reach Regulation (EC) No. 1907/2006 and the EC Directive 2002/95/EC (RoHS) on the restriction of the use of certain hazardous substances in electrical and electronic equipment must be observed.

14.5 Furthermore, the Supplier shall hand over a Material Declaration in accordance with <http://www.unife-database.org> on request (in or attached to the transport packaging), in particular the template UNI-CR-001.02 shall be used for this purpose, which we shall be pleased to hand over on request. The cover sheet must be completed and signed by the supplier.

**14a. Compliance with directives, regulations, etc.**

The Supplier shall comply with the relevant directives and regulations of the home country (registered office of the Company) and/or the applicable EU regulations and directives. The supplier is obliged to inform the purchaser of the use of substances, in particular of toxic or hazardous raw materials, metals etc. (e.g. mercury) according to the type and scope/quantity of the use in writing.

**15. Safety and Environmental Protection**

15.1 All packages shall be easily separable and recyclable, avoid compound unit packs and be made of naturally renewable materials. The corresponding information regarding product and material shall be made available.

15.2 Any persons carrying out work in performance of the contract on the premises of the Purchaser shall observe the applicable safety and environmental protection regulations. Any liability for accidents that happen to these persons on the Purchaser's premises shall be excluded unless these have been caused by intentional wrongdoing or gross negligence on the part of the legal representatives or vicarious agents of the Purchaser.

15.3 In all other respects reference is made to clause 2.7 with regard to safety and environmental protection.

**16. Renewal of contract**

The Purchaser also expressly reserves the right to extend the term of the contract without changing the agreed conditions.

**17. Final Provisions**

17.1 Place of jurisdiction for all disputes arising directly or indirectly from contractual relationships that are based on these Terms shall be Berlin insofar as legally permissible, otherwise the place of business of the Purchaser. FURTHERMORE, IT SHALL BE AT THE PURCHASER'S DISCRETION TO BRING ACTION BEFORE A COURT AT HIS PLACE OF BUSINESS, THAT OF HIS BRANCH OFFICE OR AT THE PLACE OF PERFORMANCE.

17.2 Should one of the contractual partners discontinue payment or should his assets be subjected to insolvency proceedings or composition proceedings be instituted in or out of court, the other party shall be entitled to withdraw from that part of the contract that has not been fulfilled.

17.3 Should any provision of these Terms and of the other concluded agreements be or become invalid, this shall not affect the validity of all other provisions of these Terms. The contracting parties undertake to replace such invalid provision with a valid provision that as closely as possible reflects the economic purpose of the invalid provision.

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