

General Terms and Conditions PE 4/02
of PROCESS-ELECTRONIC GmbH
(hereinafter referred to as "PE")



1. Validity of the General Terms and Conditions of PROCESS-ELECTRONIC GmbH (hereinafter referred to as "PE")

These General Terms and Conditions are applicable for companies, legal entities in the sense of public law and special funds under public law (hereinafter referred to as "Customer"). They apply to all contracts concluded between PE and the Customer and all other agreements which are met within the framework of business dealings. The General Terms and Conditions of the Customer are hereby expressly excluded from the contractual agreement; this also applies if PE does not expressly refuse acceptance of their provisions. In the event that the Customer does not accept the validity of the following General Terms and Conditions, PE must be notified of the Customer's non-acceptance in writing.

2. Conclusion of Contract, Prices and Payment Conditions/Right of Retention; Default of Payment

Quotations of PE are not binding and do not constitute any obligation on the part of PE. Delivery contracts are only effective if they are confirmed in writing. The prices quoted in the order confirmation are binding. Deliveries are made at the prices and under the conditions stated in the written order confirmation. All prices are quoted without the applicable rate of VAT. The prices are quoted ex works of the named place.

The prices agreed in writing apply without any discount options. Price amendments are permitted if the period between the conclusion of contract and the agreed delivery date exceeds two months. If in this case wages, material costs or general market cost prices increase before the consignment is ready, PE is entitled to increase the prices in accordance with the respective increase in costs. The Customer is only entitled to withdraw from the contract if the price increase is considerably higher than the increase in the general cost of living between the time of order placement and delivery.

The Customer is only entitled to offset any counterclaims which are uncontested or deemed as legally binding by a court. The Customer is entitled to assert retention rights if they apply to the same transaction and are either uncontested or deemed as legally binding by a court.

PE is entitled to charge interest for default of payment to the total of 10 percent above the basic interest rate; this interest rate can be higher if PE proves a greater scope of damage, and lower if the Customer provides evidence of a lesser scope of damage. PE is entitled to demand the legally valid default interest rate in all cases. PE reserves the right to demand additional compensation for default of payment.

In the event of default of payment by the Customer, PE is entitled to retain further supplies and services.

3. Delivery Deadlines/Partial Consignments

Delivery deadlines are planned by PE in accordance with possible supply schedules. If dates and deadlines are not expressly agreed as binding, they only state the approximate date of delivery and are not binding for PE. In the event of non-compliance with a non-binding delivery date or such a deadline, PE is not in default before a period of three weeks has elapsed, commencing upon receipt of a written reminder from the Customer. The delivery deadline is regarded as met when PE has shipped the goods or informed the Customer of readiness for shipment. In the event of delivery default, the Customer is entitled to withdraw from the contract to the exclusion of all other rights after setting an appropriate extended deadline. This right to withdrawal does not apply if PE cannot comply with the extended deadline without intent or negligence. In the event of force majeure, PE is entitled to postpone production and delivery by the duration of the hindrance in addition to an appropriate preparatory period, or to withdraw from the contract to the extent for which PE is in default. Conditions are regarded as equivalent to force majeure if these make delivery for PE extremely difficult or impossible, especially if these conditions also affect sub-suppliers.

4. Delivery/Scope of Delivery/Modifications, Partial Delivery

Delivery will only be made to the Customer. The Customer can only transfer corresponding rights or any other rights to a third party with the express consent of PE.

The scope of delivery is specified in the written order confirmation of PE. The right to implement constructional or type modifications resulting from technical improvements or legal requirements is reserved during the delivery period if the supplied goods are not changed considerably and the Customer can be reasonably expected to accept these modifications.

Unless expressly otherwise agreed in writing, PE is not responsible for the erection or installation of the product. If PE undertakes to erect/install the device, this is performed voluntarily and without any legal obligation.

PE is entitled to send the consignment in partial shipments if this does not result in disadvantages for use.

5. Shipping, Notice of Defects and Transfer of Risk

Costs for shipping and transport insurance must be borne by the Customer, whereby PE is entitled to stipulate the shipping method and route. The Customer is obliged to inspect the goods immediately upon arrival and notify PE in writing without delay of any visible faults, transport damage to the supplied goods or the packaging. The same applies to concealed damage and faults when these are detected. Should PE suffer any loss of right to claim for damages towards the shipping company, insurance company, sub-supplier or any other third person as a result of non-compliance with this obligation, the Customer is liable for all costs arising from failure to comply with this obligation. Risk is transferred to the Customer as soon as the goods leave the PE works or warehouse.

6. Warranty for Defects, Limitation of Liability and Claims for Damages

a) Detected Faults/Scope of Corrective Measures/Obligations of the Customer

If movable goods are supplied, and when such goods are installed, the subject of contract is exclusively our sold product and any installation work which may be involved with the properties and features and intended purpose described in the enclosed product description. Other or additional properties and/or features or any additional intended use is only regarded as agreed if these are expressly confirmed by PE in writing.

Software supplied by PE is only regarded as faulty if it is not generally free from material and manufacturing errors and does not generally run as described in the product manual. Any warranty for other properties, especially suitability of the software for the customer's purposes, is excluded. PE reserves the right to make modifications to the programmes, also after delivery, which improve the performance of the programme without negatively affecting the other software. Specifications in the manual, in the documentation and/or promotional material which refer to the extension options of a product or any available accessories are not binding, especially as the products are subject to continuous further development, and the information can refer to such future developments.

We hereby expressly point out that the oxygen sensors supplied by PE which serve to measure the partial oxygen pressure in the atmosphere of furnace systems are subject to a certain degree of wear and consumption, and that this cannot be regarded as a fault within a normal scope. The normal service life of these sensors can only be ensured if they are checked and serviced professionally (regularly and correctly), whereby replacement of damaged or worn parts may be necessary. The Customer must comply with the respective operating, installation and maintenance instructions. Correct checks and maintenance is possible by PE or by specialists authorised by PE; if this work is performed by the Customer or other third parties, the Customer must ensure that this work is performed correctly, and if necessary must provide evidence to this effect.

Warranty for all supplied goods does not cover faults resulting from normal wear, external influence or operating errors. Warranty is rendered invalid if the Customer modifies devices, elements or additional equipment himself or has these modified by third parties without the consent of PE, unless the Customer can provide full evidence that the faults in question are neither fully or partly caused by such modifications and that corrective action is not hindered by such modifications. After agreement with PE, the faulty parts must be made locally available or sent in to the works, whereby PE will bear the costs for shipment if the parts have been proven to be faulty.

Within the framework of its warranty obligations, PE is entitled to repair or replace faulty devices, elements, or additional equipment. Before replacement the Customer is obliged to remove programmes (including application programmes, data, data carriers, modifications and extensions) to the necessary degree. The Customer is obliged to grant PE the necessary time and opportunity to undertake any necessary rework. If the Customer sets a deadline for corrective measures, this must be appropriate and allow a minimum period of three months after notification of the deadline is received.

The Customer must inform PE immediately of any faults occurring during the warranty period.

b) Claims for Damages and Reimbursement of Costs

If other legally stipulated conditions are met, the Customer is not entitled to make any claims for damages in the event of any fault in PE performance if PE or any manager or other vicarious agent can only be accused of simple negligence; the right to damages is, however, still valid if PE has given a guarantee or if the claim is based on injury, fatal or otherwise, or damage to health. The other warranty rights of the Customer remain unaffected by this restriction.

If the Customer demands reimbursement of costs instead of making a claim for damages, PE is released from obligations if the fault is only due to simple or slight negligence.

Claims for damages can only be made for other reasons than the occurrence of a fault or a given guarantee if PE or one of its managers or vicarious agents can be accused of at least gross negligence or in the event of injury, fatal or otherwise, damage to health or if PE has violated a major contractual obligation. Except in cases in which injury, fatal or otherwise, or damage to health occurs, PE is only liable to the typical contractual amount foreseeable at the time of conclusion of contract, limited to five times the net price; in the event of intent, full damages are due. PE does not accept any liability for lost profit, lost savings or direct and/or subsequent damage. These liability restrictions do not apply in the event of intent or gross negligence. PE does not accept any liability for recovery of data unless loss of data is due to gross negligence or intent of PE and the Customer has provided safety measures which comply with the state of the art to ensure that these data can be recovered with appropriate endeavour.

Regulations on product liability and the burden of proof remain unaffected.

c) Reasonable Reworking Attempts

If the law governing service contracts is applied, our subsequent fulfilment attempts cannot be regarded as failed until after the second unsuccessful attempt, and after the third unsuccessful attempt in the case of software.

d) Limitation/Acceptance

Warranty rights are limited to one year for the supply of movable, new goods; no liability is accepted for material faults for delivery of movable, used goods.

If goods are installed in an existing building, the warranty obligations are limited to one year. Warranty obligations are also limited to one year in the event of maintenance and servicing work. This also applies if only installation work is performed.

If, however, the object of our supplies and services is a building or works, and if the fulfilment of such an order entails the supply of planning or supervision services for this, or if the object is generally used for a building and causes its defectiveness, limitation for such supplies and services is five years.

The respective term in all cases commences as stipulated in the respective legal regulations.

In systems, i.e. if equipment has been installed by PE or generally if legal service contract regulations apply, this term commences upon acceptance. Acceptance is regarded as understood when the installed equipment is successfully tested, otherwise on the day when the equipment is taken into operation, at the latest, however, 90 days after delivery.

7. Retention of Title

The supplied goods remain the property of PE until full payment of all outstanding sums arising from the main and secondary business relations of PE with the Customer. The Customer cannot acquire ownership of the supplied goods by installation in other equipment. If the supplied goods are processed or machined before payment is made, they remain the property of PE in all stages of processing or machining and also as finished goods. All processing is performed for PE. Ownership by the Customer in accordance with the German Civil Code (BGB) section 950 (= by processing or reconstruction) is excluded, as the Customer acquires ownership for PE and all material is only in the Customer's safekeeping. If the goods are installed in other equipment supplied by third parties, PE becomes co-owner of the part of the newly created products which corresponds to the ratio of the value of the PE goods to the third party goods. The products thus created are regarded as reserved goods of PE. The Customer is obliged to insure the goods subject to the reservation of title of PE (i.e. theft, fire, water and low-voltage insurance) and to provide evidence of such insurance to PE upon request. In the event of damage, the insurance claim of the Customer will be regarded as assigned to PE.

The goods may not be pledged or ownership of the goods transferred by way of security in any way before full payment has been made. If the goods are resold before full payment has been effected, irrespective of whether these are in an unmachined, machined or processed condition, this is only permitted if title to the goods is reserved. The Customer already assigns the right to payment resulting from such sales to PE to the extent of the outstanding sum owed to PE by the Customer at the time of sale. PE will accept this assignment. The Customer is authorised to collect such due sums as he is entitled within the normal scope of business if this is not expressly forbidden by PE.

PE is entitled to reclaim the goods in the event of payment default by the Customer, and the Customer is obliged to surrender the goods. The enforcement of retention of title rights and pledging of the supplied goods by PE is not regarded as withdrawal from the contract unless the provisions of consumer protection legislation apply or this is expressly declared in writing by PE.

8. Data Backup Clause

Before installing the software product supplied by PE, the Customer is obliged to make a backup of all current data on a suitable storage medium. PE does not accept any liability for damage, especially extra costs, arising from non-compliance with this obligation.

9. Export Regulations

The supplied goods are subject to German export regulations. The Customer is responsible for compliance with all applicable regulations through to the end user. The Customer bears responsibility for rendering correct information for customs-related processing.

10. Applicable Law, Place of Fulfilment and Court of Jurisdiction

German law will apply exclusively, excluding the laws on international sale of movable goods, also if the headquarters of the Customer are registered in another country. The place of fulfilment and court of jurisdiction for enforcement procedures is Göppingen.