

Pro Automation GmbH: General Terms and Conditions (GTC)

1. General Scope

1.1. The following General Terms and Conditions apply to all business relationships between the Pro Automation GmbH and natural and legal persons (hereinafter called „Customer“). They apply correspondingly to any future transactions, including specific cases, particularly **future subsequent delivery or subsequent orders** without a special reference to these General Terms and Conditions.

1.2. The conclusion of the contract shall be conducted under the up to date version of the current GTC, which is available on our homepage: <http://www.proautomation.at>.

1.3. We conclude the contract **exclusively** under our GTC.

1.4. We shall not accept **terms and conditions of the Customer** which conflict with or differ from our GTC unless we have explicitly agreed to the validity of such terms and conditions in a written form.

1.5. Terms and conditions of the Customer shall not be recognized if we explicitly **object** to them upon receiving.

2. Offers, Conclusion of Contracts

2.1. Offers made by the Pro Automation GmbH are **not binding**.

2.2. **Promises**, assurances and guarantees on our part or agreements deviating from these GTC related to the contract shall only be binding with a written confirmation from us.

2.3. All **information** listed about our products and services in catalogs, price lists, brochures, advertisements on trade fairs, newsletters, promotional mailings, or other media and that is not attributed to us, should be stated to us by the Customer, unless the Customer specifies that the process is a subject to commission. In this case, we can confirm the accuracy of the information. Should the Customer violate this obligation, such statements are non-binding unless explicitly stated in writing in the terms of the contract.

2.4. **Cost estimates** are non-binding and are subject to change.

2.5. For the supply of materials and semi-finished goods that come in series (e.g. parts) the dimensions, weight and shape stated in our proposals and price lists are non-binding for us and shall not be determining factors in the cost estimates. We reserve the right to alter the design and technical data of the deliverables (quality, dimensions, color, etc.) to the extent the Customer can be reasonably expected to accept such an alteration. Deviations in the quantity of ordered standard goods up to +5% and custom-made devices up to +10% shall be also admissible.

3. Prices

3.1. Prices are in principle **not** to be regarded as a **flat rate**.

3.2. For the services ordered by the Customer and that are **not covered by the original contract** payment shall consist of adequate compensation if there was no prior payment settlement.

3.3. Prices are exclusive of **VAT**. All additional expenses, e.g. storage, packaging, transportation, loading and shipping, customs duties and insurance costs shall be borne by the Customer. We will take back any packaging only if expressly agreed.

3.4. Professional and environmentally sound disposal of the **salvage** shall be arranged by the Customer. Unless we are otherwise instructed, the expenses shall be additionally compensated by the Customer to the agreed extent provided that there was no prior agreement on adequate compensation.

3.5. We are entitled to **adjust** the contractual payment for our own legitimate reasons, as we are required to do so at Customer's request, when

- a) labor costs changed due to legislative changes, changes in regulations, collective agreement, or company agreement; or
 - b) the cost of other service provision changed due to inevitable cost factors such as further procurement costs for the materials due to the recommendations of the Joint Commission or changes in national or world market prices for raw materials, exchange rates, etc. that have occurred since the conclusion of the contract
- differ in the range of at least 5%.

The adjustment will take place to the extent to which the actual manufacturing cost change at the time of concluding the contract compared to those at the time of actual performance unless we violate the period of performance.

3.6. The payment **value** for a long-term obligation shall be **preserved** according to the *VPI 2005* and be made by an adjustment of charges. The month in which the contract was concluded shall be taken as a starting point.

3.7. **Travel costs, daily expenses, and accommodation** shall be charged separately. Travel time is considered as working time.

4. Goods Provided

4.1. If equipment or other materials are provided by the Customer, we are entitled to charge the Customer 5% of the value of the provided equipment or materials as **additional manipulation charge**.

4.2. Such equipment and other materials provided by the Customer are not covered by **warranty**.

5. Payment

5.1. 60% of the payment shall be paid upon acknowledgment of order and 40% upon delivery or shall be kept available for collection and be paid upon receiving the invoice.

5.2. The entitlement to a **discount** requires a written express agreement.

5.3. The **payment intended** by the Customer for a particular invoice is non-binding for us.

5.4. Should the Customer be in default with payment under the existing contractual relationships, we reserve the right to suspend performance of our contractual obligations until the **fulfillment of the obligations** by the Customer.

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5.5. We shall also be entitled to **claim the payment** for services already provided under the current business relationship with the Customer.

5.6. If the Customer is in **default** even with only one **payment**, all granted bonuses (rebates, discounts, etc.) expire and are included in the invoice. Default in payment is stipulated to be 1% of the gross amount per month.

5.7. All dunning, information and other **costs** (collections, charges, lawyer's fees, etc.) incurred to recover a debt shall be borne by the Customer to the extent these costs are required to enforce our rights.

5.8. The Customer may **set off** counter claims only if they are undisputed or finally awarded by court.

5.9. If a considerable deterioration Customer's financial situation occurs, we are entitled to claim the payment stipulated in the contract or the purchase value immediately and carry out the execution of the order only upon receiving advance payment.

6. Credit Assessment

6.1. The Customer shall give his clear consent to the fact that his data may be transmitted to the state-privileged **creditor associations** solely for the purpose of creditor protection: AKV EUROPA Alpenländischer Kreditorenverband für Kreditschutz und Betriebswirtschaft; Creditreform Wirtschaftsankunft Kubicki KG and Kreditschutzverband of 1870 (**KSV**).

7. Cooperation Duties of the Customer

7.1. Our **obligation to perform the work begins** as soon as:

a) all technical details are clarified,

b) all technical and legal requirements are satisfied by the Customer (which we can specify upon request)

c) stipulated down payment or security deposit is received, and

d) Customer's contractual obligations for preparatory work and assistance, particularly those mentioned in the following subparagraphs, are met.

7.2. The Customer is obliged to ensure that assembling carried out by our **assembly workers** can start immediately **on their arrival**.

7.3. The Customer has to arrange for all necessary **authorizations** from third party as well as advice and permits issued by the authorities at his expense. These can be willingly requested by us.

7.4. The costs of the relevant to the work performance operations, including testing the required amount of **energy** and water shall be borne by the Customer.

7.5. For the period of work the Customer shall provide our staff with **lockable premises** without the access to the third party which can be used as a break room for our staff as well as storage for tools and materials.

7.6. The Customer is responsible for ensuring that all necessary **structural, technical and legal requirements**, necessary for work performance or the object of sale and that were described to the Customer in the contract or pre-contract or that were supposed to be known by the Customer from the relevant experience or expertise, are met.

7.7. Likewise, the Customer must ensure that the technical facilities, such as cabling, wiring, networks and the like, are in perfect technical and operational condition and are compatible with the works executed by us or the object of sale.

7.8. We are entitled but not obliged to **check** these **facilities** for an extra fee.

7.9. The Customer must provide all necessary information about the location of **concealed electric-, gas- and water lines** or similar facilities, escape routes, other obstructions, potential hazards and all necessary structural data without prior request before the assembling begins.

7.10. The Customer is entitled to request all relevant details of the contract.

7.11. The Customer bears sole responsibility for configuration and working order of the **supplied parts**. Mandatory audit of any **documents provided** by the Customer, conveyed information or instructions - including all parts of the technical construction documentation and all required certificates of compliance with the Machinery Directive as well as any other applicable certificates - that do not concern delivery items, is excluded from our liability. The Customer who puts delivery items into circulation may be contractually bound to issue the certificate.

7.12. The Customer is not entitled to **assign** claims and rights under the contract without our written consent.

8. Performance of Service and Work

8.1. **Reasonable objective justified minor changes** to our service performance are considered approved in advance by the Customer.

8.2. Shall there be made any **changes** or additions to the order after its placement for any reason, the delivery/performance period will be extended for a reasonable period of time.

8.3. If the Customer wants contractual work to be performed within a **shorter period of time**, this shall result in alternations of the contract. There might be a need for overtime and/or the acceleration of procurement might increase additional costs. Thus, the payment shall increase adequately in accordance with the necessary extra time.

8.4. **Partial deliveries and partial performance** shall be admissible if based on important grounds (e.g. installation size, construction progress, etc.) and if deemed reasonable for the Customer. They may be invoiced separately.

8.5. If the delivery is agreed to be **on request**, the service/object of sale is considered retrieved at the latest six months after order placement.

9. Delivery Terms / Terms of Completion

9.1. Delivery dates and deadlines for the provision of services are **non-binding**, unless agreed as binding in writing.

9.2. In case of events of force majeure or other circumstances which are unforeseeable and are not dependent on us but on third party, e.g. our suppliers, or other similar events that are beyond our control but will result in delayed delivery, we may extend the delivery period as required by the circumstances. In these events, the Customer is expressly prohibited from rescinding the contract due to delays that make the contractual obligation unacceptable.

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9.3. If the beginning of the work/service performance is **delayed** or interrupted by the **Customer**, especially because of the breach of any obligations under section 7, the service times shall be prolonged and completion dates postponed accordingly.

9.4. We are entitled to set off 1% of the invoice amount per month of the delay of the performance for the necessary **storage** of materials, equipment and the like on our premises. The payment and acceptance obligations of the Customer shall not be affected thereby.

9.5. The Customer may rescind the contract due to default only after a reasonable **grace period** the Customer granted by registered letter expired without success.

10. Liability, Shipment

10.1. The risk will transfer to the Customer upon holding the goods, materials or equipment available to the forwarder or carrier for delivery, however, at the latest when the goods, materials or equipment leave the plant or the warehouse. Shipping, loading, unloading and transportation is always the risk of the Customer.

10.2. The Customer authorizes any proper **shipping method**. We pledge to conclude a transport insurance only upon Customer's express request and at his cost and expense.

10.3. We are entitled to **collect** the packaging and shipping **costs** and the fee on delivery from the Customer if the Customer is in default on payment in the existing business relationship or if the stipulated credit limit is exceeded.

10.4. The Customer is responsible for the safety of the place of performance, delivered and stored materials and installed equipment. **Losses and damages** are covered at his expense.

11. Acceptance

11.1. If the Customer defaults in acceptance for more than 2 weeks (refusal to accept, delay in preparatory work or the like, no request within an appropriate period of time by order on request), and the fails to eliminate attributable to him circumstances which may delay or prevent the performance within a reasonable **period of grace** provided, we are entitled under the valid terms of the contract to **use** special equipment and materials **elsewhere**, if we replenish them in the case of a continuation of work performance within reasonable time under the particular circumstances.

11.2. Should the Customer default in acceptance, we are also entitled, under the terms of the contract, to store the goods on our premises for the **storage fee** as specified in the subsection 9.4.

11.3. In the case of a justified rescission of the contract we may claim **damages for non-performance** from the Customer amounting to up to 50% of gross contract value without proof of actual damages.

11.4. The assertion of greater damages is admissible.

12. Retention of Title

12.1. We will retain exclusive title to the delivered or installed goods until full payment of the purchase price and of all of our other claims under the business relationship.

12.2. **Resale** is permitted only if we were provided in advance with the name and exact address of the buyer and we agree to the sale. In the case of our approval due amount is assigned to us.

12.3. The Customer has to note this **assignment** in his books and on his accounts until full payment of the fee or purchase price and to **inform** his Purchaser. We shall be entitled to request that the Customer gives us all information and documents which we require as necessary for collection.

12.4. The Customer declares his express agreement that we are allowed to **enter the place** where the goods subject to retention of title are located for the duration of the reserve of title.

12.5. All necessary prosecution **costs** shall be borne by the Customer.

12.6. While the retention of title is in effect **rescission** of contract is possible only when this is explicitly stated.

12.7. We shall be able to **utilize** revoked reserved goods directly and at best possible rate.

12.8. Until full payment of all of our claims service/object of sale may not be pledged or assigned as security and the **right of ownership may not be transferred to third party**. The Purchaser shall inform us without delay if the reserved goods or the other rights granted to us are to be pledged by third parties, or if another impairment of our rights might be pending.

13. Copyrights of a Third Party

13.1. For delivered items, which we produce according to **Customer provided documentation** (design, drawings, models or other specifications, etc), the Customer warrants that the production of these goods does not infringe on any third party rights, in particular patents, utility-model patents or any other industrial property rights and copyrights.

13.2. Should third parties claim their rights, we are entitled to continue **production** of goods at the risk of the Customer until the rights of the third parties are clarified and the ineligibility of the claims is clear.

13.3. We are also entitled to claim the refund of the incurred necessary **expenses** from the Customer.

13.4. We are entitled to stipulate an **advance** for any legal costs.

14. Software

14.1. The Customer is not entitled – excluding all claims - to copy or modify the software, allow access to a third party or use it for purposes different than those specifically agreed on. This is particularly true for the source code.

14.2. Software warranty ensures only the compliance of the software with the specifications agreed on in the contract, provided that the software is installed following installation requirements and used according to the conditions of service. We do not provide a guarantee that the software is developed without defects and functions properly without fails and errors. The occurrence of errors cannot be excluded.

14.3. For customized software performance characteristics, special functions, hardware and software requirements, installation requirements, conditions of service and operation arise solely from the written agreement on the specifications

between the parties. The Customer shall provide all the necessary information for the development of customized software before the contract is concluded.

15. Our Intellectual Property

15.1. All deliverables and related construction documents, **designs**, sketches, cost estimates, proposals and other documentation as well as the software developed by us or with our contribution remain our intellectual property.

15.2. None of these materials may be disclosed, copied, published, broadcast, re-written, modified or used without our expressed written **permission**. This also applies to the extracts from the text.

15.3. The Customer bears responsibility for disclosure of any **confidential information** received from our company to third parties.

16. Warranty

16.1. The **warranty period** for our services is one year after delivery.

16.2. The date of **delivery** is - unless agreed otherwise (e.g. formal acceptance) - the completion date, or at the latest the date when the Customer took the services in his disposal or refused to accept the work without a valid excuse. On the date when the Customer is notified about the completion, the service - unless there is a valid excuse for the refusal of acceptance - is considered to be in his power of disposition.

16.3. **Remedying** defect caused by the Customer result in non-recognition of the defect.

16.4. The Customer must **prove** that the defect was already present at the time of the delivery.

16.5. **Claims** and complaints of any kind should be registered as warranty claims and promptly sent to our headquarters (no later than 2 business days) in a **written** form with the most **precise description of the defect** and an indication of the possible cause. The defective goods or works are to be taken back from the Customer, if this is feasible.

16.6. If **defects** alleged by the Customer are **unjustified**, he is obliged to reimburse for expenses incurred for detecting the absence of defects or fault remedy.

16.7. We are entitled to undertake any **investigations** considered necessary by us ourselves or have them arranged, even if the goods or parts will be made unusable through such procedures. In the event that such inspection shows that we are not responsible for any defects, the Customer has to bear the cost of the procedure.

16.8. All transportation and travel costs related to the remedying defects shall be borne by the Customer. On our request the Customer shall provide us with necessary manpower, energy and facilities free of charge as well as provide all necessary cooperation in compliance with the provisions of subsection 16.7.

16.9. We shall be given at least **two attempts** to remedy defects by the Customer.

16.10. We can prevent **rehibition** by remedying the defect or reducing the price provided that it is not a fundamental or irreparable defect.

16.11. If the subject of the contract is based on **data**, drawings, plans, models or other specifications provided by the **Customer**, we can only warrant correct execution.

16.12. It is not considered a defect if the object is not completely suitable for the stipulated use, when this is based exclusively on the fact that the actual facts **differ** from the **information** available to us at the time of service provision, due to the failure of the Customer to perform his duty to cooperate under subsection 16.7.

16.13. Likewise, it is not considered a defect if the **technical facilities** of the Customer such as cabling, wiring, networks, etc. are not in perfect technical and working condition or are not compatible with the delivered items.

17. Liability

17.1. If the Customer breaches contractual or pre-contractual obligations, in particular due to the impracticability, delay, etc. we are liable for **financial losses** only when a willful misconduct or gross negligence is attributable to us.

17.2. Our liability shall be **restricted** to the limit of liability stated in our all-risk liability insurance.

17.3. This restriction shall also apply to the damage of an item that we have taken for **processing**.

17.4. The **limitation period for claims** arising from damages is six months.

17.5. The restriction or exclusion of liability for damages against us shall also apply with respect to the personal liability for damages of our **employees**, members of staff, co-workers, representatives and vicarious agents unrelated to the contract on the part of the Customer.

17.6. Our liability is excluded for damages caused by **improper handling** or storage, overloading, failure to follow operating and installation instructions, improper installation, commissioning, maintenance, maintenance by the Customer or third parties not authorized by us, or natural wear-out, provided that the event was the cause of the damage. Likewise, there are liability limitations for failure to perform necessary maintenance.

17.7. If and when the Customer claims the insurance benefits for damages, for which we are liable, employing his own **insurance** services or insurance taken out on his behalf (e.g. third party insurance, comprehensive insurance, transportation insurance, fire insurance, interruption of operation insurance, etc.), our liability to the client is limited to the extent of the losses incurred by the Customer due to the use of such insurance (e.g. higher insurance premium).

17.8. Product characteristics with regard to the certification, user manuals and other product-related instructions and directions (particularly about monitoring and maintenance) shall be provided by us, other manufacturers or importers from the Customer's side with the account of their knowledge and experience. The Customer as a reseller must obtain adequate insurance for **product liability claims** and undertakes to indemnify and hold us harmless against all third party claims resulting from such damages.

18. Severability Clause

18.1. If any individual provisions of these General Terms and Conditions should be or become ineffective, this will not affect the validity of the remaining provisions or the contract concluded on the basis thereof.

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18.2. The parties commit themselves in this case to agree upon a new provision that comes close to the economic purpose of ineffective provision to the greatest extent possible and that they would have agreed upon had they known the invalidity. The equivalent is valid in case of the need to fill a gap.

19. Generalities

19.1. **Austrian law** is exclusively applicable to these GTC and any additional integral parts of the contract.

19.2. The application of the CISG (UN Convention on Contracts for the International Sale of Goods) shall be excluded.

19.3. **Place of performance** shall be the headquarters of Pro Automation GmbH (Vienna).

19.4. **The exclusive place of jurisdiction** for all disputes arising between the Parties from these GTC or from any further integral parts of the contract is the contractor's (Pro Automation GmbH) local competent court.

19.5. The information about **changing** Customer's personal information, name of the company, address, legal form or other **relevant information** shall be immediately provided to us by the Customer in the written form.

Status: 25. Februar 2011