

General Terms and Conditions

§ 1 General - Scope of Application

1. Our sales conditions shall apply exclusively. Unless we expressly consent to their validity in writing, conditions of the buyer which are contradicting or deviating from our sales conditions will not be recognized. Our sales conditions shall remain applicable even in the event we unreservedly perform the delivery to the buyer in knowledge of contradictory or deviating conditions of the buyer.
2. All agreements made between us and the buyer for the execution of this contract are laid down in writing herein. Any subsidiary agreements or amendments must be made in writing.
3. Our sales conditions are solely applicable to businesses in accordance with §24 AGBG (German "Standard Contracts Act").

§ 2 Conclusion of Contract - Execution of Purchase Orders

1. We reserve the right to accept a purchase order within four weeks if and when said order can be classified as an offer as per § 154 BGB (German Civil Code). Unless otherwise agreed upon, our offers are non-binding.
2. Purchase orders shall be deemed as accepted only upon written confirmation. The same shall apply to any further amendments, subsidiary agreements, promises, and/or declarations—also on the part of our personnel—to this contract. Our order confirmation shall be decisive for the scope of any order which we execute in a correct and professional manner.
3. The examination for correctness, completeness, and regularity of all delivered documents and figures, in particular drawings, descriptions, designs and other information related to the purchase order, will only be considered part of the order upon written agreement. Otherwise, we will take the facts and information given by the client to be correct. We will, however, inform the client of any irregularities we may discover.

§ 3 Prices - Terms of Payment

1. Unless otherwise noted in the purchase order confirmation, our prices are applicable for shipment "ex works" and include packaging.
2. Unless specified otherwise, an invoice will be issued upon delivery and payment for our services and deliveries is to be made without any deductions to our paying agent within 14 days after invoicing.
3. In the absence of an effective payment agreement, the normal payment shall be applicable for our activities as described in the purchase order confirmation.
4. The compulsory value-added tax is not included in our prices; the applicable amount will be indicated separately in the invoice.
5. The deduction of discounts shall require a special written agreement.
6. Unless otherwise noted in the purchase order confirmation, the net purchase price (without deductions) is payable within 14 days after having received the invoice. Upon default of payment, we shall be entitled to charge a default interest rate amounting to 4% above the current official base rate per annum. In case we are able to prove higher default damage, we hereby reserve the right to demand this. The buyer, however, shall be entitled to provide evidence that the

default has provoked no or a significantly lower damage than that which may be claimed.

7. Bills of exchange and checks will only be accepted for payment upon prior approval. In the event a bill of exchange is accepted, we will charge an additional 4% above the current base rate of interest for expenses. Payment resulting from bills and checks is taken as delivered only when the equivalent value has been credited irrevocably to our account.
8. The buyer shall be entitled to set-off payment claims only when his counter claims have become final, are undisputed, or recognized by us. The buyer shall be entitled to claim retention if and when his counter claim is based on the same contractual relationship.

§ 4 Delivery Period

1. Compliance with our delivery commitment shall depend on the due and proper fulfillment of the buyer's obligations. We hereby reserve the right to plea non-performance of contract.
2. In the event the buyer fails to accept delivery or violates other cooperation obligations, we shall be entitled to claim compensation for any subsequent damages, including any additional expenses. We hereby reserve the right to demand further additional claims.
3. If the conditions stipulated in Paragraph 4.2 are met, the risk of accidental loss or of accidental deterioration of the object of purchase shall be transferred over to the buyer at the moment when the latter defaults acceptance or payment.
4. The buyer shall be liable for any storage costs incurred by the delay of delivery for which he is responsible.
5. We accept liability in accordance with provisions of the law in the event that we are responsible for a delivery delay which amounts to a breach of an essential contractual obligation. In this case, however, liability for damages shall be limited to the foreseeable, typically arising damage.
6. In case we are restrained from performing our obligations due to the occurrence of unforeseeable events which affect us, our suppliers or other vicarious agents, and which we could not have averted with reasonable care in the conditions of the case, e.g. war, interruption by lawful authority, civil commotion, forces of nature, accidents, other operating problems, and delays in the delivery, changes and supplements to the order after the conclusion of the contract, as well as additional or new demands and requirements by the authorities, inspection authorities, etc., we shall be entitled to adjust the delivery accordingly or to cancel the contract altogether.

§ 5 Time of Performance for Consultancy Contracts

1. The time of performance commences when all details of the execution of the purchase order have been clarified and we have reached agreement with the client on all relevant conditions. The respective processing times specified by us are provided to the best of our knowledge. They are only approximately binding and may diverge from the actual time of completion.
2. If fixed dates are agreed upon, they shall only be valid on the condition of due and complete clarification of all details of the purchase order, in particular receipt of all documents, approvals, and releases to be procured by the client and the due receipt of an advance payment, as required. In case of agreement on a completion date, this shall be taken as not met only when at that moment our services have been incomplete or defective to such an extent that the use of the results or commissioning is not possible on the intended date. Non-essential deficiencies are not considered.

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3. If the execution of our work is delayed by the client the time of performance shall be extended for the duration of the delay. Any resulting costs shall be the client's responsibility.
4. The provision stipulated in Paragraph 4.6 applies accordingly.
2. In the event of a defect for which we are responsible, it shall be at our discretion to remedy the respective defect or to supply a replacement.
3. The buyer shall be required to provide us with the necessary time and opportunity required to implement the warranty. In the event of unsuccessful defect remedy or replacement delivery, the buyer is entitled to demand redhibition (cancellation of contract) or a corresponding reduction of the purchase price (diminution) at his own discretion.

§ 6 Zassage of Risk - Packaging Costs

1. Unless otherwise noted in the purchase order confirmation, the delivery shall be provided "ex works."
2. In accordance with the packaging ordinance, with the exception of pallets, transport and all other packaging material shall not be taken back. The buyer is obliged to dispose of the packaging material at his own cost.
3. At the request of the buyer we will obtain insurance coverage for the shipment; the incurring costs shall be the responsibility of the buyer.
4. In the event we shall be responsible for transport, it will be the obligation of the buyer to unload the delivery immediately upon arrival and to provide all the auxiliary means required to ensure a trouble-free unloading. All relevant costs shall be the responsibility of the buyer.
4. We only accept liability for the correctness of the respective product documentation to the extent that the conclusions are based on the correctness of the data and information made available. Our statements on products, processes, and all activities required for execution of the purpose of the contract are given to the best of our knowledge and belief. This does not relieve our client from the duty to examine at his own responsibility the employment for the use, application, and procedures. Further, a liability is accepted solely upon the proper intended use. In particular, our liability shall become void if the client does not follow the documentation, instructions, information, etc. handed over to him and/or if the products are tampered with outside of normal use. This includes, for instance, operation of the articles with fuels other than those agreed upon in the purchase order, with another fuel-air ratio or the use of pre-heated air.

§ 7 Duties of the Client, Termination

1. The client has an obligation to cooperate to ensure the proper execution of the contract. In particular, the client is required to submit to us all necessary documents completely and in due time so as to guarantee reasonable processing time and that the agreed upon time is not exceeded. Further, the same applies to the information on all events and circumstances which could be of importance for the execution of the order.
2. If the client neglects the obligation mentioned above or any other collaboration to which he is obliged or, if he defaults the acceptance of the performance offered to him, we reserve the right to specify a reasonable period of time in which we announce the termination of the contract following the lapse of said period of time. After an unsuccessful lapse of that period of time, we reserve the right to terminate the contract without notice. Our claim for compensation for additional costs and the damage caused by the default or by the failure of the client to cooperate shall remain unaffected, even in case that we do not make use of our right of termination.
5. Environmental effects, improper treatment, and weather conditions which may affect the burners remain outside the responsibility of promeos or are subject to force majeure. Damages resulting from the above-mentioned effects are therefore excluded from any warranty or liability claim.
6. Further additional claims of the buyer—on whatever legal ground—are excluded. In the event we are in negligent violation of an essential obligation of the contract, our liability for damages for material damage or personal injury shall be restricted to the compensation payment of our product-liability insurance.
7. The above-mentioned indemnity does not apply in the case that the cause of the defect was due to intent or gross negligence. In addition, indemnity shall also not apply in the event the buyer claims damages due to non-fulfillment for lack of a quality which has been promised.

§10 Retention of Title

1. We reserve the right to retain the title for the object of purchase until receipt of all payments stipulated in the delivery contract. Further, we reserve the right to take back the object of purchase in the event of a contract-breaking conduct on the part of the buyer—in particular if payment is delayed. Except when expressly stated in writing, the act of taking back the object of the purchase does not mean cancellation of the contract. Our seizure of the object of purchase does, however, always mean cancellation of the contract. After retrieval of the object of purchase we are entitled to liquidation of the latter, with the proceeds to be set off against the debt of the buyer, minus reasonable liquidation costs.
2. The buyer is obliged to handle the object of purchase with care. In particular, it is his responsibility to adequately insure the object of purchase against damage due to fire, water, and theft at his own cost and at purchasing price.
3. In the event of seizure of the object of purchase or other interference by third parties it is the obligation of the buyer to inform us immediately in writing so that we may initiate proceedings pursuant to § 771 ZPO (German Code of Civil Procedure). In the event the third party is not in a position to reimburse us for the court and out-of-court costs of an action as per § 771 ZPO (Code of Civil Procedure), the buyer shall be made liable for the resulting losses.

§ 8 Cancellation and Compensation for Damages

1. If it is found after conclusion of the contract that the payment of the purchase price is at risk due to insolvency of the buyer we shall be entitled to demand a security corresponding to the services already carried out.
2. We may cancel the contract if the buyer does not meet this demand within a reasonable period of time. Additional claims—in particular the assertion of retaining liens—remain reserved.
3. The buyer shall be committed to inform us immediately as soon as there is insolvency or insolvency proceedings are opened against him.

§ 9 Complaint and Warranty, Liability

1. To the extent it concerns fungible items, the delivered articles must be accepted by the buyer even if they have non-essential defects. In accordance with §§ 337, 378 HGB (German Commercial Code), the buyer is committed to fulfill his duties regarding examination and defect notification immediately.

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4. The buyer shall be entitled to sell the object of purchase in the ordinary course of business operations; independently of whether the object of purchase has been sold without or after processing, however, the buyer hereby assigns all receivables amounting to the final invoice amount (including value-added tax) of our claim which accrue from the resale towards his customers or third parties. The buyer shall remain entitled to collect this claim even after assignment. This in no way affects our power to collect the claim directly. Nevertheless, we hereby agree not to collect the claim so long as the buyer is meeting his payment liabilities from the revenues, is not in default of payment and does not, in particular, file a petition for composition or insolvency proceedings and there has been no cessation of payments. In such an event, we reserve the right to demand that the buyer notifies us as to the assigned claims and their debtors, give all the information required for collection, hand over the pertaining documents and inform the debtors (third parties) of the assignment.
5. The buyer's processing or transformation of the object of purchase always takes place on our behalf. If the object of purchase is processed together with other articles which do not belong to us, we shall automatically acquire joint ownership of the new article in terms of the value of the object of purchase (final invoice amount incl. value-added tax) to the other processed articles at the time of processing. Further, the same conditions shall apply for the processed or transformed item as for the object of purchase delivered under reservation.
6. If the object of purchase is inseparably mixed together with other articles which do not belong to us, we automatically acquire joint ownership of the new article in terms of the value of the object of purchase (final invoice amount incl. value-added tax) to the other mixed articles at the time of mixing. In the event mixing takes place in such a manner that the buyer's object is considered to be the main item, it is hereof taken as an agreement that the buyer will transfer proportionate joint ownership to us. The buyer shall keep the sole ownership or joint ownership resulting from this on our behalf.
7. For securing our claims against him, the buyer shall further be required to assign us those claims against a third party which may result out of the union of the object of purchase with an immovable.
8. We hereby agree to release the securities to which we are entitled at the buyer's request insofar as the realizable value of our securities exceeds the claims to be secured by more than 10%. We retain the right to choose the securities to be released.

§11 Copyright, Obligation to Preserve Records and Documentation

1. All documents, drawings, sketches, specifications, expert opinions and other records as well as their copyrights shall remain in our property. These documents may not be made accessible to third parties without our prior consent. We will not unconscionably refuse approval.
2. After termination of our services and after payment the client may demand that approved designs, drawings, and other records be handed over to him. We shall not be obliged to keep and preserve drawings, documents, etc. for more than 5 years after fulfillment of our contractual obligations.

§12 Non-Solicitation Agreement

The buyer shall not solicit employees of the promeos GmbH for twenty-four (24) months after the buyer's last business agreement with the promeos GmbH. In the event the buyer violates the non-solicitation provision, the buyer shall pay a contractual penalty of two years of the gross salary of the solicited or hired employee; this shall apply to every individual solicited employee. In a dispute, the counterparty shall prove that the former promeos employee was hired without targeted solicitation.

§ 13 Applicable Law, Place of Jurisdiction, Place of Performance

1. The non-unified law of the Federal Republic of Germany (BGB/HGB) shall apply to all rights and claims resulting from this contract. The applicability of the UN law on sales (CISG) shall be expressly excluded.
2. If the buyer is a fully qualified merchant, our registered headquarters shall be the place of jurisdiction. We shall, however, also be entitled to bring action against the buyer at a court of his legal residence.
3. Unless otherwise noted in the purchase order confirmation, our registered office shall be the place of performance.

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