

## **GENERAL TERMS AND CONDITIONS, MAY 2018**

### **1. SCOPE:**

1.1. These General Terms and Conditions are valid exclusively even if they are not expressly referred to or mentioned in particular, for example, during verbal or telephone negotiations for the entire business relationship of J. Pichler Gesellschaft m.b.H., FN 230409m (subsequently referred to as contractor in the following), with the business partner (subsequently referred to as client in the following). Agreements which deviate from these General Terms and Conditions are legally binding if the contractor has expressly agreed to them. All previous conditions shall become invalid with presence of these General Terms and Conditions. Conditions or other contractual conditions that contradict these General Terms and Conditions shall be invalid even if they appear in the documents of the client.

1.2. The contractual relationship is exclusively subject to Austrian law. The following order is valid for the application and interpretation of the contractual conditions:

- a) the individual contract texts and their attachments including supplemental conditions of the respective business papers of the offer and order processing;
- b) these General Terms and Conditions;
- c) the Austrian Business Code (UGB);
- d) the General Code of Civil Law (ABGB).

The validity of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

1.3. Should individual parts of these General Terms and Conditions become invalid, the remaining provisions shall not be affected thereby. In place of the invalid conditions, those legal conditions which come closest to the legal and economic intent of the invalid provisions shall apply.

1.4. The existing General Terms and Conditions also apply for all contracts to be concluded between the contractor and the client and are based on these as of yet.

### **2. CONCLUSION OF CONTRACT AND SUBJECT OF THE CONTRACT:**

2.1. All business dealings shall only become legally binding for the contractor if these are confirmed in writing or – for an agreed delivery according to § 3 – fulfilled by the sending of the goods. Scope and content of the contractual relationships are specified by the written confirmation of the order as well as by the supplemental conditions of the respective business papers of the offer and order processing of the contractor such as quotation forms, bill of delivery forms, invoice forms and credit forms, etc. In the event that there is no order confirmation, these General Terms and Conditions, as well as the conditions of the respective business papers of the offer and order processing of the contractor shall apply in all cases. Client blanket orders also accepted by the contractor (quantity contracts with agreed time limits of the call-offs to occur) are legally binding for the client and obligate the client to payment.

2.2. Silence by the contractor shall never imply agreement to, or acceptance of, declarations of any kind. Oral agreements, including those that were made with the representatives of the contractor, are not legally binding, provided they were not confirmed in writing by the contractor.

2.3. General Terms and Conditions or purchasing specifications of the client are non-binding for the contractor even if the contractor has not expressly disagreed to them. The delivery shall never be construed as acceptance of the client's General Terms and Conditions and/or purchasing specifications. By the placing of orders or the acceptance of the goods, the client gives his understanding of the validity of these General Terms and Conditions of the contractor.

2.4. Additional agreements, supplements, changes and possibly contrary terms and conditions shall require the written confirmation of the contractor in order to be valid. Agreements made orally or by telephone shall have no legal validity until they have been confirmed in writing by the contractor. The contractor shall be duly informed in writing of deviations to plans, specifications, basic values and other contractual and project fundamentals and requires the written consent of the contractor in order to become valid.

2.5. Bidding documents may neither be duplicated nor made available to third parties without the consent of the contractor. The contractor retains all property and copyrights to these documents and can claim these back at any time without providing details or reasons.

2.6. It is incumbent upon the client to inspect the products ordered by the client with regard to their technical requirements, the preliminary remarks of an open competitive bidding, as well as the inspection of their legal, requirements of building law, technical and functionally proper suitability, fitness and applicability for the respective case. No liability of any kind whatsoever shall be explicitly assumed by the contractor for this.

2.7. If a good is manufactured by the contractor based on construction specifications, drawings, designs, models or similar documents of the client, the liability of the contractor shall not extend to the correctness of the construction but rather that the implementations occurred according to the specifications of the client. In this case, the client indemnifies and holds harmless the contractor for all infractions of duty of care and due diligence.

2.8. Documents such as figures, sketches, drawings, samples, cost reports, technical plans, etc. are only binding integral parts of the contract when these are expressly clarified in written form and confirmed by the contractor in writing.

2.9. The contractor reserves and retains all property rights and copyrights of all documents related to the execution of the order. These documents may not be made available by the client to third parties without the permission of the contractor and must be returned to the contractor upon request. The contractor is not obligated to check the documents provided by the client for their correctness and completeness and thus assumes no liability of any kind for the correctness and completeness of these provided documents.

2.10. References in the orders made by the client to other texts, documents or conditions than those that accompany the order are not legally binding for the contractor.

### **3. PRICES:**

3.1. The offers of the contractor are subject to change without notice. Cost estimates are non-binding. The costs for the refund of a cost estimate are carried by the client.

3.2. The calculation of the price takes place in net EURO, depending on the sales unit according to the respective valid pricelist of the contractor. The legal VAT and customs duties are invoiced separately. Prices are ex works/ex store, uninsured, including packaging, excluding transport. The packaging is done in a customary manner. Packaging will not be taken back. Packaging will be invoiced separately for sensitive products and products that require intensive packaging. If the client desires a different type of packaging, the client must inform the contractor about this desire in writing. The client will be invoiced separately for this. If delivery/transport is agreed to in individual cases, the price is assumed to be without loading, carrying and insurance.

3.3. The prices on the day of delivery are always valid. The contractor reserves the right increase prices for potential material and/or wage increases, as well as order

cancellations or suspensions. The buyer carries a possible currency risk. The contractor may, with good cause, calculate the price which is valid on the day of delivery for significant modification of the relationships, particularly wages, freight, energy and fuel costs, insurance costs, customs duties, taxes, fees and other dues of all kinds. If the client disagrees with this provision, the client has the right to withdraw from the contract. Additional all-inclusive price reductions or special agreements are only allowed if they are expressly confirmed in writing by the contractor.

3.4. If the delivery or the service is intended for a later point in time than two months beyond the conclusion of the contract, the contractor reserves the right to make adjustments to the material prices.

3.5. For replacement parts, the contractor may invoice the contractual partner for the current price on the day of delivery.

### **4. TERMS OF PAYMENT:**

4.1. Payments are due net upon receipt of the invoice, provided that nothing different is expressly noted on the invoice. Receipt of the invoice applies to the date of the delivery of the respective invoice payment request or, for postal undeliverability, the day of the filing a post office. A payment shall be only be considered received when the contractor has the funds of the entire invoice amount at his disposal. The contractor may demand advance payments. Collection expenses shall be carried by the client.

4.2. Discountable or accordingly taxable bills of exchange, as well as checks are accepted exclusively after previously written agreement of an undertaking to pay and against full expense reimbursement. Bills of exchange and checks are first valid after redemption with the credit entry as payment.

4.3. No offsetting is possible against claims of the contractor for payment regardless of the legal reasons. Likewise, no right of lien may be exercised by the client.

Any kind of retention agreements or liability escrow agreements, penalties as well as contract fulfillment guarantees are presumed to be not agreed to unless they are confirmed in writing by the contractor in the individual case. Bills outstanding against the contractor may not be severed by these for lack of express agreement. The reduction of payments due to reasons that the contractor is not accountable for, such as customer delays, strike or force majeure is prohibited.

4.4. For orders with a net merchandise value below EUR 150.00, an extra charge for small quantities of EUR 15.00 shall be assessed per order, delivery and invoice number. Postal, rail and express deliveries occur exclusively on the costs and risk of the recipient. The contractor may specify minimum order quantities.

4.5. If the date of payment is exceeded, a late interest in the amount of 8 % above the respective prime lending rate of the European Central Bank is agreed upon. The right to enforce further claims for damages is not excluded by this. A delay in payment takes effect on the payment date and does not require a separate reminder for overdue payment. Failure to comply with the payment conditions or circumstances which justify the acceptance that the credit worthiness of the client is impaired shall have the immediate maturity of all requests of the contractor as a result. Furthermore, the contractor has the right to cease further deliveries, specify other payment conditions, execute outstanding deliveries for advanced payment only or withdraw from the contract, respectively, demand damages for non-fulfillment.

4.6. For partial payments, the delay in payment shall also lead to a loss of the fixed date so that the entire amount still open shall become due immediately.

4.7. Objections against the invoices of the contractor must be filed with the contractor in writing within 10 days after the invoice date. The payment request listed in the invoice shall otherwise be regarded as accepted.

### **5. DELIVERY AND SHIPMENT:**

5.1. All orders are accepted under reserve of the shipment possibilities. Terms for delivery and scheduled delivery dates are always approximate and are strictly non-binding. If a binding delivery date was agreed to, this thus begins with the receipt of the signed order confirmation, however, not before receipt of all documents and materials to be provided by the client, clarification of all technical and commercial questions, possible releases and not before receipt of a possible advance payment. Should the client be behind schedule with the listed services or with the fulfillment of his contractual obligations, e.g., handover of the documents or other types of involvement, the shipment is to be re-stipulated after arrival of the same in all cases. The client shall carry any related costs arising. The terms for delivery are adhered to if the completion, respectively, the readiness for shipment is reported to the client.

5.2. Under no circumstances shall the the client be entitled to penalties for delays or other objections on account of a late shipment. The client can also not withdraw from the contract.

5.3. Place of fulfillment and payment is the headquarters of the contractor's company. The shipment occurs – if nothing different is agreed to – through pick-up ex works from stock of the contractor. For a shipment arranged in the individual case, the contractor shall be deemed to have fulfilled his contractual obligations with the provisioning of the goods for shipment to the fulfillment location and the risk of shipment or delivery passes to the client.

5.4. The shipping to a different site than the place of fulfillment in individual cases shall also occur for freight prepaid shipments without exception not unloaded, uninsured, with the client carrying the costs, risks and hazards including the risks of breakage and loss during the shipment. In this case, the contractor reserves the right to select the dispatch route and mode of dispatch. Transport damages, as well as the loading and unloading risk are at the expense of the client. The client is responsible for procuring any insurances in association with this. Possible freight agreements refer exclusively to the acceptance of the freight costs and not the acceptance of other costs and risks. In all cases, a road-train access is deemed to be agreed to.

5.5. If a call-off order is agreed to, the contractor has the right to ship and invoice the completed goods after 2 months at the latest even if the call-off order of the client has not yet occurred. The contractor is justified in all cases to carry out part or advance deliveries and invoice for these.

5.6. For shipments according to orders, no return delivery is possible.

### **6. DELAY:**

6.1. The delivery date shall be extended accordingly due to unforeseeable unavoidable events, (e.g. strike, closure of a company, business disruption), in cases of force majeure, due to interruptions in operation of the supplier of the contractor, due to failed or delayed receipt of the raw materials and trade goods and materials, due to delays in the creation and all other circumstances which are unforeseeable or dependent on a party's will and will result in delayed delivery, the contractor may either rescind the contract in whole or in part or extend the delivery period as required by the circumstances without damages or other claims due to the client.

6.2. A possible shipment penalty which is, however, agreed to for the order individually before granting of the contract, is limited to a maximum of 10% of the respective shipping amount and shall only have effect for deliberate intention or gross negligence of the contractor. The assertion of additional claims for damages which go beyond the agreed shipment penalty is expressly excluded.

6.3. If the client does not accept the contractually provisioned goods at the contractually arranged location or at the contractually agreed time, the contractor can either demand fulfillment or withdraw from the contract after setting a deadline. Beyond this point in time, hazard and risk are transferred to the client in any case. All associated expenses and costs shall be assumed by the client. The contractor expressly reserves the right to enforce claims for further damages.

6.4. For delayed delivery upon the fault of the contractor, the client may demand fulfillment or withdraw from the contract – after setting an appropriate deadline – . Further claims by the client against the contractor due to the delayed delivery, in particular the replacement of corollary damages, damages consequential to defects and all demands by third parties are considered excluded.

#### **7.) Defects:**

7.1. The client shall immediately notify the contractor in writing about all defects to the goods supplied by the contractor. Quantitative complaints due to obvious and visual defects are to be immediately noted upon handover of the bill of delivery. The contractor is to be notified of qualitative complaints in writing and reported within 14 days after receipt of the goods – as any warranty claims shall otherwise be forfeited. Complaints made at a later date can no longer be taken into account by the contractor. If no timely notification of defects is made, the warranty claim is lost. Every exclusion of the obligation of notification of defects on the side of the client shall not be accepted by the contractor and is deemed to be laid to rest.

7.2. Requirement for the use of warranty services is that the client fully complies with his contractual obligations. Complaints by the client do not entitle him to a reduction or retention of the purchased price. In the case of justified complaints that are acknowledged by the contractor, the contractor has the right at his discretion to take back the goods, effect a proper replacement shipment or repair or acknowledge a reduced contract price. The removal or installation costs shall be carried by the client in any case. The special recourse in compliance with § 933b ABGB is expressly excluded. Further claims beyond this of any kind by the client, in particular, claims for the replacement of corollary damages, damages consequential to defects and all demands by third parties shall be deemed excluded.

7.3. For the goods supplied by the contractor, the contractor shall assume only those warranties which have been provided by the supplier, however, a maximum of one year for defects that already exist at the time of transfer. A warranty beyond this is excluded. The warranty period begins as per Point 5.3 with the pick-up of the goods from stock ex works of the contractor by the client or – for a shipment arranged in the individual case – by the provisioning of the goods for shipment to the fulfillment location.

7.4. Excluded from the warranty are all damages that do not lie in the scope of influence of the contractor, such as a natural wear of subjected parts, the consequences of elementary events, damages caused by force and improper handling by the client or third parties, nonobservance of instructions for care and maintenance of the supplied products, operating errors, connection errors or installation errors etc. The warranty of the contractor shall expire if modifications or interventions to the goods or finished goods supplied by the contractor are made by the client or third parties without the prior express written consent of the contractor.

7.5. The contractor shall perform warranty repairs during normal working hours at the fulfillment location. Replaced parts become the property of the contractor. The original warranty period shall not be extended or interrupted by acknowledged work or improvements (repair) work or replacement shipments.

7.6. The client is obliged to store defective goods carefully at his own costs until the contractor has them at his disposal again.

#### **8. RESERVATION OF TITLE:**

8.1. All shipments of goods shall remain the exclusive property of the contractor until the complete payment of all demands resulting from the business relationship including the accruing interest and costs and until all the existing and resulting liabilities are fulfilled. The reservation of title shall also be preserved even after installation or further processing of the supply products.

8.2. The client is authorised to possess the goods in the regular course of business operations. If the client disposes of the goods of the contractor or installs them, the client thus cedes to the contractor in advance the arising purchase price from this disposal or the installation or work wage claims by third parties with all ancillary rights. The client must inform the contractor of this without being asked. The client is furthermore obligated to make known to the contractor on request about the assignment to third parties and furnish proof of this. Insofar as the client collects the amount himself, the client operates as the representative of the contractor and must immediately forward the amounts to the contractor. The client shall not be entitled to place a lien on the delivered goods to third parties or assign them as security.

8.3. The client shall comply with the necessary formal requirement for the protection of the property right. For seizure or other confiscation/use by third parties to the existing goods owned by the contractor, the client is obliged to assert the property right of the contractor and inform the contractor without delay. The client shall immediately inform the contractor in writing about all access by third parties to the existing goods owned by the contractor. The client shall bear the costs which the contractor incurs for intervention measures against access by third parties and compensate the contractor for all damages.

8.4. For repair work, the contractor can place a lien on the processed object until payment of the invoice amount.

8.5. The contractor can assert a right of retention to the item of the company until payment of this amount.

#### **9. LIABILITY:**

9.1. The contractor assumes no liability of any kind and offers no compensation for damage losses for capital and interest losses, loss of profits etc. due to defects, malfunctions. Exceeding the delivery deadline of the goods and replacement parts, delays and repairs, etc. arise; with the exception of cases of deliberate intention or negligence of the contractor. It is expressly agreed that the contractor shall not provide any compensation for damages to the client for damages to goods that are not subject matter of the contract, for the failure of deliveries, damages consequential to defects or corollary damages such as lost profits, financial losses, claims by third parties etc. and other damages, provided the contractor is not charged with gross negligence. The burden of proof lies with the client

9.2. Recourse claims against the contractor asserted by the client or third parties according to the scope of the Product Liability Act are excluded unless the beneficiaries of the recourse can prove that the fault is caused in the sphere of the contractor and that gross negligence has been caused.

#### **10. PLACE OF FULFILLMENT, COURT OF JURISDICTION:**

Klagenfurt is agreed as place of fulfillment and court of jurisdiction for all claims from the business relationship.

#### **DATA PRIVACY STATEMENT**

The protection of your personal data is a special concern of J. PICHLER Gesellschaft m.b.H (in the following referred to as "us" and "we"). We treat your personal data confidentially and we process your data exclusively on the basis of the statutory provisions. In the context of this Data Privacy Statement, we're informing you about the key aspects of data processing.

#### **1. These are the purposes for which we process your data:**

We use your personal data for the purpose of implementing pre-contractual measures, for contract execution, for the correction of technical faults within the framework of the statutory warranty periods and/or warranties and maintenance contracts agreed as well as for responding to requests, and for purposes of accounting and billing.

If you have given your consent to this, e.g. by having subscribed to our newsletter via our website, or if other legitimate interest by our company in compliance with the statutory provisions is given, we'll furthermore utilize your personal data for advertising purposes.

#### **2. Which categories of data are processed by us:**

We process those data for the above-mentioned purposes, which you as customers provide to us, so that we are able to implement pre-contractual measures and to conclude the contract. We process in particular the following categories of data: name, title, communications data and address data, email correspondence, bank details, payment details, contractual conditions, products ordered, and delivery details.

Within the scope of our support system, apart from your personal data (email address, address, etc.), in order to correct technical faults, we also process device-specific data of the products / facilities that you have procured. These data are for instance: the device type, serial number, IP number of the terminal, installation site, operating mode, temperature, warm water temperature, ventilation stage, operating hours.

If you subscribe to our newsletter in the context of our website, we furthermore process your email address, your first name and surname as well as further data that you have given on a voluntary basis (academic title, your function within the company, company name), in order to provide you with information in our newsletter, for advertising purposes, about the products and services sold by J. PICHLER Gesellschaft m.b.H. and about events of J. PICHLER Gesellschaft m.b.H.

Furthermore, we use cookies on our website. Information regarding the type of cookies and the reason for which they are used are provided to you in our [Cookie Policy](#). Our [Cookie Policy](#) has to be read in connection with this Data Privacy Statement.

#### **3. Legal bases for data processing:**

The processing of your personal data by us for the purpose of contract initiation or the performance of a contract is justified in compliance with Section 6 Subsection 1 lit b of the DSGVO (General Data Protection Regulation). In order to be able to handle your requests and orders to your full satisfaction or to solve any technical issues on your device / facility, we have to process your data. Insofar as marketing measures are implemented by us, they are effected in compliance with the statutory provisions and are covered by the specifications laid down by Section 6 Subsection 1 lit f of the DSGVO (General Data Protection Regulation) (legitimate interest in marketing and advertisement) and Section 6 Subsection 1 lit a (consent).

#### **4. To whom we pass on your personal data:**

In the scope of the contract performance, your personal data are only passed on to that extent as is essential for the performance of the contract or for billing purposes. In this connection, your personal data may in particular be passed on by us to subcontractors / suppliers. For processing payment transactions, we furthermore pass on your data to banks.

Furthermore, if you utilize the PICHLERluft app, your personal data (email address, password, device ID and the device-specific data of your Pichler device) are transferred to Amazon Web Services, Inc. 410 Terry Avenue North, Seattle WA 98109 United States. Information on the exact use of your personal data in the scope of the app is provided to you in our [PICHLERluft app Data Privacy Statement](#).

#### **5. For how long are we storing your data:**

We are storing your personal data for as long as the contractual relation with you is effective. When the contractual relation has been terminated, we will only store your data for as long as legal storage times prevent the deletion of the data. Your data will be stored for advertising purposes as long as you have agreed to this or unless you have not disagreed to the utilization of your data for advertising purposes and there is a legitimate interest of our company to utilize your data.

#### **6. Changes to the Data Privacy Statement**

We reserve the right to make changes to this Data Privacy Statement. The current version of the Data Privacy Statement is always available on our website at <http://www.pichlerluft.at/datenschutz.html>.

#### **7. Your rights:**

If the statutory provisions are complied with, you have the following rights with regard to your personal data: The right to access, correct, delete, restrict processing, object, and transfer your data.

If you have any questions with regard to your data processed, or if you wish to exert the rights granted to you, please contact: J. PICHLER Gesellschaft m.b.H., Karlweg 5, 9021 Klagenfurt am Wörthersee, or [office@pichlerluft.at](mailto:office@pichlerluft.at). J. PICHLER Gesellschaft m.b.H., Karlweg 5, 9021 Klagenfurt am Wörthersee is responsible for the utilization of your personal data in terms of the DSGVO (General Data Protection Regulation).

If you wish to object to the utilization of your personal data, you can furthermore contact the competent supervisory authority, under Datenschutzbehörde (Data Protection Authority), Wickenburggasse 8, 1080 Vienna, email: [dsb@dsb.gv.at](mailto:dsb@dsb.gv.at).