

# Conditions of Contract and Supply PETER HIRT GmbH Rev 03/2016

## 1. Scope of Application

1.1 These General Conditions apply to the supply of products and components (hereinafter "the Supply") by PETER HIRT GmbH, abbreviated as PHZ.

1.2 These conditions are valid by 01.04.2016

1.3 This english version of the general conditions only serves as an informative translation. For any legal interests and issues, the original german version is authoritative.

## 2. General

2.1 The contract come into effect by receipt of the by PHZ written acknowledgement, stating its acceptance of the order ("Order Confirmation ") provided that, in particular, the necessary permits have been obtained from the authorities and the agreed payment security has been provided.

2.2 Digital or electronical signatures are accepted if in accordance with the law and if performed state of the art.

2.3 General conditions of contract of the customer shall only be valid if expressly accepted in writing by PHZ.

2.4 All agreements and legally relevant declarations must be in writing.

## 3. Scope of Supply

3.1 The scope of the Supply by PHZ is exhaustively set out in the Order Confirmation and any appendices thereto.

## 4. Designs, Technical Documents and Software

4.1 Product definitions and functions stated in designs, drawings and technical documents and data contained in software are only binding if these documents are part of the related contract. Catalogues and brochures are only binding where applicable based on clause 14.3 of these General Conditions.

4.2 PHZ may at any time make amendments for improvement purposes.

4.3 PHZ retains all rights to all documentation, in particular tender offers, designs, drawings, technical documents and software. The customer acknowledges these rights and shall not make such designs, drawings, documents and software available to any third party, either in whole or in part, nor use them for any purposes other than the agreed purposes without prior written authorisation by PHZ.

4.4 For the in the Supply included software, the customer is granted the nonexclusive and non-transferable right to use the software for the specified purpose. The customer is not permitted to make copies (except for the purposes of backup, error searches or for the replacement of defective data carriers) or to update, upgrade or make any other extensions to the software. The customer may not disassemble, decompile, decipher or reverse engineer the software without a prior written acknowledgment of PHZ. If the customer breaches one of these conditions, PHZ is entitled to immediately revoke the right to use the software.

## 5. Regulations and Standards

5.1 The customer shall, in the request for offer and at the latest when placing the order, refer PHZ in writing to the standards and regulations applicable to the provision of the Supply, the mode of the Supply and to health and safety.

5.2 Unless otherwise agreed, the Supply shall comply with those standards and regulations at the place of destination of the Supply of which PHZ has been informed by the customer according to Clause 5.1 above.

## 6. Reservation Notice

6.1 Express reservations by PHZ personnel regarding instructions, directives or measures by the customer or regarding actual circumstances may be made in writing or orally and are deemed to be reservation notices by PHZ relieving PHZ of any liability.

## 7. Prices

7.1 All prices are net, ex works, excluding packing, in Swiss francs, if not otherwise specified, without any reductions. All additional costs, such as for freight, insurance, fees for export, transit, import and other permits, and for certifications, must be balanced by the customer. Offered prices are not binding for reorders.

7.2 For supplies inwith Switzerland the minimum invoice value is CHF 50.00, for any other deliveries CHF 200.00.

7.3 Offers are, if not seperately indicated, valid for 2 months after issue.

7.4 Taxes, including, without limitation, value added taxes (VAT), levies, fees, social security contributions and the like, which PHZ or its personnel must pay in connection with this contract or its fulfillment, in particular for supplies and services outside Switzerland as well as the administrative costs connected therewith, shall be borne by the customer. If taxes, including, without limitation, VAT, levies, fees, social insurance contributions or the like are levied against PHZ or administrative costs are incurred, they shall be reimbursed by the customer within 30 days of receipt of a copy of the respective documents.

7.5 PHZ reserves the right to adjust prices in the event that

- the delivery period is extended for any of the reasons set out in clause 10.4; or

- the nature or the scope of the Supply is changed; or

- the documents provided by the customer are not in conformity with the actual circumstances or are incomplete; or

- the price was agreed in a other currency than swiss francs (CHF) and the exchange rate CHF/foreign currency at the time of the order has changed more than 5%; or

- laws, regulations or generally accepted rules of interpretation are changed after the submittal of the tender.

7.6 PHZ reserves the right to renegotiate the prices any time.

## 8. Terms of Payment

8.1 Payments shall be made, if not stated differently on the invoice, by the customer at PHZ's domicile, net with no deduction for cash discount, expenses, taxes, levies, fees, duties, and the like. Due payments shall be made intwith the on the invoice specifed time period after invoice issue date.

8.2 The customer may neither withhold nor reduce payments due to complaints, claims or counterclaims not accepted by PHZ in writing.

8.3 The dates for payment shall be complied with even if dispatch, transportation, any installation or acceptance of the Supply is delayed or made impossible due to reasons for which PHZ is not responsible, or if immaterial parts of the Supply are missing or if post-delivery work, that does not make the use of the Supply impossible, is to be carried out.

8.4 If advance payments or agreed payment securities are not provided in accordance with the terms of the contract, PHZ shall be entitled to either adhere to or terminate the contract and shall, in either case, be entitled to claim damages including compensation for loss of profit. If the customer, for any reason, is in arrears with any other payment, or if PHZ is seriously concerned that it will not receive payments in total or in due time because of circumstances having taken place since the entering into of the contract, then PHZ, without prejudice to any other claims, may suspend the further performance of the contract and retain any of the Supply ready for dispatch until new terms of payment and delivery have been agreed and until PHZ has received sufficient security. If such agreement cannot be reached within a reasonable time, or if PHZ does not receive sufficient security, PHZ may terminate the contract.

## 9. Reservation of Title

9.1 PHZ shall retain owner of the Supply until receipt of full payment in accordance with the contract. The customer shall take all measures necessary for the protection of PHZ property. It shall keep the delivered items in good order at its own cost throughout the period of reservation of title and insure them against theft, breakage, fire, water and other risks and ensure that the title of PHZ is not prejudiced.

## 10. Delivery Period

10.1 The delivery period starts at the point in time when the contract takes effect or at the point in time when, by the customer to be made, advance payments have been made.

10.2 If the goods are at PHZ ready to pick up inwith the agreed delivery period and the customer is advised, the delivery period is seen as fulfilled.

10.3 Compliance with the delivery period is conditional upon the customer fulfilling all its contractual and non-contractual obligations to PHZ.

10.4 The delivery period is extended if:

a) the information required to perform the contract is not made available to PHZ in time or is incomplete, or if the customer subsequently changes such information; or

- b) the customer or a third party is in delay with work it has to execute, or the customer is in delay with the performance of its contractual obligations; or
- c) impediments exist which PHZ, despite the use of the required level of care cannot prevent, regardless of whether such impediments arise at PHZ's, the customer's or a third party's premises. Such impediments include, in particular, significant operating breakdowns, accidents, labour conflicts, late or deficient delivery of raw materials, semi-finished or finished products, important work parts being rejected, measures taken or omissions by any state authorities; or
- d) any other circumstances arise for which PHZ is not responsible.

10.5 If delivery is not made on time, the customer may claim damages for delayed delivery if it can be proved that the delay was caused through the fault of PHZ and that the damage was a result of the delay. A compensation, rate based on the contract price, for delayed deliveries is weekly maximally 1%, and shall not exceed 5% in total. No claim for compensations for delayed delivery may be made in the first 3 weeks of delay. After reaching the maximum compensation for delayed delivery, the customer shall grant PHZ a reasonable extension of time in writing. If such extension is not complied with for reasons for which PHZ is at fault, the customer may reject the delayed part of the Supply. If a partial acceptance is economically not justifiable on the part of the customer, the customer may terminate the contract. In such an event, PHZ shall refund the payments made for the parts of the Supply affected by the termination.

10.6 If a specific date is agreed instead of a delivery period, this date shall correspond to the last day of a delivery period. Clauses 10.1 to 10.5 shall apply thereto.

10.7 All claims of the customer arising from or in connection with delays in performance of the contract are regulated expressly and exhaustively by this clause 10. Other and further claims are excluded. This limitation of liability does not apply in the event of gross negligence or wilful misconduct by PHZ.

## 11. Packing

11.1 Packing is invoiced separately by PHZ and may not be returned. Although, if the packing is explicitly indicated as PHZ's property, it shall be returned by the customer, carriage paid, to the place of dispatch.

## 12. Passing of Risk

12.1 Unless otherwise agreed, risks shall be passed on delivery to the customer, EXW, „ex works Nänikon, Switzerland“ (INCOTERMS 2002).

12.2 If dispatch of the Supply is delayed at the request of the customer or due to reasons for which PHZ is not responsible, the risk shall pass to the customer at the time originally foreseen for the Supply to be dispatched from PHZ's premises. From this time on, the Supply shall be stored and insured on the account of and at the risk of the customer.

## 13. Inspection and Acceptance of the Supply

13.1 PHZ inspect and verify the Supply before dispatch, upon quantity and for warranted qualities where a verification is possible. Further testing upon customer request shall be agreed in writing and paid by the customer.

13.2 The customer shall inspect the Supply within 10 days and shall immediately notify PHZ in writing of any defects. If the customer fails to do so, the Supply shall be deemed to be accepted.

13.3 To the extent that PHZ is responsible for the notified defects, PHZ shall remedy such defects as soon as possible, and the customer shall give PHZ sufficient opportunity to do so.

13.4 All claims by the customer arising from or in connection with defects in the Supply are regulated expressly and exhaustively by this Clause 13. Other and further claims are excluded. This limitation of liability does not apply in the event of gross negligence or wilful misconduct by PHZ.

## 14. Warranty

### 14.1 Warranty Period

The warranty period is 24 months from the date day of dispatch of the Supply from PHZ's premises. The warranty period for repaired or replaced parts of the Supply commences anew and lasts for 12 months after remedy of the defect, but shall in any event end not later than 36 months after first dispatch. The warranty period shall expire prematurely if the customer or a third party undertakes inappropriate modifications or repairs to the Supply or if the customer, in the event of a defect, does not immediately take all appropriate steps to mitigate the damage and give PHZ the opportunity to remedy such defect.

### 14.2 Liability for Defects in Material, Design and Workmanship

Upon written request by the customer, PHZ shall remedy within a reasonable period any parts of the Supply which, before the expiry of the warranty period, are proved to be defective or unusable due to defective material, by PHZ made faulty design or poor workmanship, provided that the customer has notified PHZ in writing of the defects during the warranty period and immediately after discovery. The customer shall give PHZ sufficient opportunity to carry out such remedial works. Replaced parts shall become PHZ's property. PHZ shall bear the costs of remedying the defective parts at its premises. The costs to bring the defective parts to PHZ's premises, such as transport, duties, taxes and others, shall be paid by the customer.

### 14.3 Liability for Warranted Qualities

Warranted qualities of the supply are, cumulative applicable,

b) Qualities out of production documents which are part of the contract such as drawings, quality plans, production schedules and other technical papers

b) Qualities upon actual product documentations and brochures, where existing.

c) in the Order Confirmation explicitly stated ones

Existing but not explicitly declared qualities of the supply are not warranted qualities. These qualities shall not be expected to be part of a further supply. Existing but not warranted qualities are no prejustice.

Warranted qualities are valid until the expiry of the warranty period. If the warranted qualities are not achieved or only partially achieved, the customer may initially only require PHZ to carry out the necessary remedial works. The customer shall give PHZ the necessary time and opportunity to do so. If such remedial works fail completely or in part, the customer may claim such compensation as was agreed upon for such event, or, if such an agreement was not made, a reasonable reduction in price. If, however, the defects are so major that they cannot be remedied within a reasonable time and provided the Supply cannot be used for its specified purpose, or if such use is considerably impaired, the customer may refuse acceptance of the defective part of the Supply or, if partial acceptance is economically not justifiable, terminate the contract. In such event, PHZ is only liable for reimbursement of the sums paid to it for the parts of the Supply affected by the termination.

### 14.4 Exclusions from the Liability for Defects

PHZ is not liable if the Supply does not comply with the provisions of the contract and that non-compliance is caused by the customer itself. If the Supply does not comply with the contract, that non-compliance is deemed to be caused by the customer itself, in particular, if it was the result of defective maintenance, failure to observe the operating instructions, excessive use, use of any unsuitable operating means, chemical or electrolytic influence or work not undertaken by PHZ. PHZ is furthermore not liable if the Supply does not conform with the provisions of the contract as a result of, in particular, normal wear and tear, improper use by third parties, use of spare parts or material belonging to the customer or third parties, maintenance by third parties, natural disasters or accidents.

### 14.5 Subcontractors

PHZ's liability for defects in respect of supplies and services provided by subcontractors nominated by the customer shall be no greater than such subcontractors' liability for defects.

### 14.6 Exclusivity of Warranty Claims

Any warranty claims of the customer are expressly and exhaustively regulated by this Clause 14. Other claims and further claims are excluded. This limitation of liability does not apply in the event of gross negligence or wilful misconduct by PHZ.

### 14.7 Liability for Additional Obligations

PHZ shall only be liable to the customer for faulty advice and the like or for breach of any additional obligations in the event of gross negligence or wilful misconduct.

## 15. Termination of the Contract by PHZ

15.1 The contract shall be amended as appropriate if unforeseen events substantially change the economic effect or the content of the Supply or substantially affect the fulfilment of the contract by PHZ, or if provision of the Supply subsequently becomes entirely or partially impossible. Insofar as such amendment is not

economically justifiable, PHZ may terminate the contract or the individual provisions affected thereby. If PHZ intends to terminate the contract, it shall, after having recognised the consequences thereof, immediately inform the customer even if an extension of the delivery time has previously been agreed. In the event of a termination of the contract, PHZ shall be entitled to payment for those parts of the Supply which have already been made. Claims for damages by the customer are excluded.

22.2 This contract shall be governed by Swiss substantive law. The "United Nations Convention on the International Sale of Goods" of April 11, 1980, shall not apply.

#### **16. Contract Performance**

16.1 In all cases where contractual performance is not duly effected and where not expressly covered by these General Conditions, the customer shall grant PHZ a reasonable additional period to remedy its performance. If such additional period lapses and is unused due to fault on the part of PHZ, the customer may terminate the contract with respect to the part of the Supply not in conformity with the contract or which is anticipated not to be in conformity with the contract. In such an event, PHZ is only liable for reimbursement of sums paid to it for the parts of the Supply affected by the termination.

16.2 In the event of a contract termination by the customer in accordance with Clause 16.1 above, the provisions of Clause 19 shall apply with regard to any liability of PHZ.

#### **17. Export Control**

17.1 The customer acknowledges that the Supply may be subject to Swiss and/or foreign statutory provisions and regulations regarding export control and, without export or re-export permits from the competent authorities, may not be sold, leased or otherwise transferred or used for a purpose other than that agreed upon. The customer agrees to comply with such provisions and regulations. The customer acknowledges that such provisions and regulations may change and are applicable to the contract according to the wording valid at the time. The Supply may neither directly nor indirectly be used in any way in connection with the design, production, use or storage of chemical, biological or nuclear weapons or carrier systems.

#### **18. Data Protection**

18.1 PHZ may, whilst performing the contract, process and keep personal data of the customer. The customer agrees in particular that PHZ may disclose such data to third parties in Switzerland and abroad for the development and cultivation of business relationships.

#### **19. Limitation of Liability**

19.1 All claims by the customer for damages not affecting the Supply itself, such as damages for production interruption, loss of usage, loss of orders, loss of profits, expenses for mounting and demounting work, claims by third parties or claims for indirect or consequential damage, irrespective of the legal basis for such claims, are excluded. The total liability of PHZ arising from or in connection with the contract or breach thereof is limited to the sums paid by the customer for the Supply provided.

19.2 Claims by the customer arising out of or in connection with the contract or the breach thereof are expressly and exhaustively regulated by these conditions. Other and further claims are excluded.

19.3 This limitation of liability shall not apply in the event of gross negligence or wilful misconduct by PHZ.

#### **20. Right of Recourse by PHZ**

20.1 In the event of injury to persons or damage to property of third parties as a result of actions or omissions by the customer or its personnel for which PHZ is held liable, PHZ shall have a right of recourse against the customer.

#### **21. Miscellaneous Provisions**

21.1 Amendments to the contract must be in writing to become effective.

21.2 If a provision of these General Conditions should prove to be wholly or partially ineffective, the parties shall replace such provision with a new provision that comes as close as possible to the legal and economic effect of the original provision.

#### **22. Jurisdiction and Applicable Law**

22.1 Place of jurisdiction shall be Uster/Switzerland. PHZ may, however, also bring an action before the courts at the customer's domicile.