

General terms and conditions of business (the “T&C” for short) of PRESTO GmbH & Co. KG (May 2012)

I. Conclusion of the contract and incorporation of these terms and conditions

These terms and conditions of business are an integral element of all business relations between us and other businesses, legal persons under public law or special funds under public law. They also apply to all future business relations, even without renewed express agreement. Departures from these conditions are only effective if they are acknowledged by us in writing. Verbal agreements are not valid.

Differing purchase terms and conditions are expressly rejected. This also applies if the purchaser makes a contradicting confirmation referring to the purchaser's own purchase or business terms and conditions.

II. Quotes, prices and delivery caveat

1. We are fundamentally bound by our quotes, including the quoted price, for four weeks after they go out.
2. Our quote prices are net prices without discounts. Statutory value added tax is to be added. Transportation costs, packaging costs, transport insurance and agreed additional services are charged in addition.
3. If there is a period of more than four months between entering into the contract and the agreed delivery date, we are entitled to pass increases in the costs on which our price calculation is based, i.e. those from increases in the prices of raw materials, energy costs, employee wages, salaries, freight and taxes, onto the purchaser.

III. Catalogues

Images and measurements reproduced in catalogues, brochures and advertisements are non-binding.

IV. Specification

1. Before a quote is given, the buyer will give a precise specification of their request. The buyer will specify properties, particularly measurements, weights, performance data and all other quality features of the item to us. It is for the buyer to specify the quality so that the item is suitable for the use the buyer intends.
 2. We are in no case required to check the buyer's locations for feasibility or viability in any respect.
 3. If the object of the contract is used for purposes not apparent from the specifications regarding its quality and nature, we have no liability regardless of whether the usefulness of the item is suitable for the buyer's purpose or not.
- V. Scope of the delivery and performance**
1. Only our written order confirmation with the data specified in this, particularly measurements and performance features, is definitive for the scope of the delivery and performance.
 2. There is no entitlement to return parts or delivered goods. If we take parts back, we are entitled to charge a 10 % flat-rate processing fee and to charge the reconditioning costs and to require the transport costs to be refunded.
 3. Authorisations or permits necessary for installation and operation of the equipment delivered by us are to be obtained from the authorities by the purchaser or building contractor at their own cost for all the equipment delivered and any necessary assembly. The customer shall bear the costs of any inspections, authorisations or permits by the authorities. We are not obliged to check.
 4. For deliveries abroad, the purchaser must handle any import formalities themselves and bear all import duties (e.g. customs duties) and other costs which the import entails themselves. Import or foreign exchange restrictions by the foreign country do not affect the validity of our contract with the customer. If the customer is unable to take receipt of the delivery or is refused this, the customer must refund us the entire loss arising from this.

VI. Periods of delivery

The delivery period begins when our order confirmation goes out, but not before the purchaser has given us all the documents, information, authorisations, permits and releases to be handled by the purchaser or before an agreed advance payment has been received free of charge in our account. The delivery period has been complied with if the item to be delivered has left our works or is ready to dispatch and the purchaser has been informed of this before the delivery period expires.

VII. Delivery

The goods will be delivered at the purchaser's expense and risk. This also applies if the delivery is not made from the place of performance. The purchaser is required to unload the delivered goods. If items are taken back or in payment, all costs of returning the items are at the purchaser's expense and the shipping risk shall be borne by the purchaser. The purchaser must take delivery of the delivered items, even if the items have defects. Partial deliveries are permitted.

VIII. Transport insurance, transport damage

We are entitled, but not obliged to take out transport insurance at the customer's expense. The sum insured is based on the value of the goods. The customer must make any claims for compensation for items damaged or lost during transport immediately to the deliverer (train, bus or carrier). Transport damage is to be recorded by the customer immediately on receipt of the delivery using two neutral witnesses and to be reported to the deliverer in writing. Original bills of lading, the evidence of liability and an authorisation to settle claims are to be given to us for the negotiations with the transport insurance. Transport damage or the loss of items to be delivered do not exempt the customer from their obligation to pay us.

IX. Transfer of risk

The risk is transferred at the moment when the item is delivered to the purchaser or to the carrier which the purchaser has hired. The purchaser is required to check the delivered item immediately. Notices of defects specified by type and extent of the defects and specifying the defects in detail are to be communicated to us in depth in writing within 5 days of delivery of the item to the purchaser or the carrier hired by the purchaser. If we have not received a notice of defects within 5 days of the transfer of risk, the item we have delivered shall be deemed to be in accordance with the contract in all parts.

X. Assembly, start-up and installation

1. If we accept an order to carry out installation, the installation will be invoiced according to the time needed and our hourly rates. The surcharges stipulated in the collective wage agreement apply to overtime, work on Sundays and work on public holidays. The time for the journey there is to be paid in full as travel time in addition to transport costs. Accommodation and other expenses shall also be borne by the purchaser. Our installation does not include all bricklaying, carpentry, roofing and electrical work or the provision of scaffolding, lift trolleys or mobile cranes.
- We can employ contract fitters and subcontractors to carry out the installation work. If the installation is impossible or delayed for reasons for which we are not responsible, the installation and travel times and other costs will be charged at the daily rate in the amount incurred.

XI. Taking delivery/acceptance

Installation services are to be accepted on completion. We will notify the purchaser of completion in writing. Acceptance of these will then formally take place within 5 working days at the time and date we suggest for this. We will inform the purchaser of this time and date with the completion notice. If the purchaser does not appear at this time or does not give us another time and date for acceptance within a further 5 working days, after the 5 working days have expired the work will be deemed to be in accordance with the contract and to have been accepted if the purchaser has not communicated another time and date to us.

XII. Rescission and safeguards

1. If the purchaser gets into financial difficulties before the ordered goods are delivered or if insolvency proceedings are opened in relation to the purchaser's assets or are not opened due to lack of assets, we are entitled to rescind the contract or to make fulfilling the contract dependent on the purchase price being guaranteed;
2. In the event of events for which we are not responsible (e.g. force majeure, military mobilisation, war, unrest, transport delay, interruption of operations, delayed delivery of material by suppliers, lockout or strikes) which have a considerable impact on our company, we have the right to rescind the contract in full or in part or to require the customer to extend the delivery periods by the period for which these events have an impact. Any claims for damages by the purchaser are excluded in such a case.

XIII. Invoices, due dates for payment and payments

1. A third of the total price of materials and machines is due on confirmation of the order, a further third is due on delivery, the last third is due 30 days after delivery.
2. Installation costs are payable in full immediately on receipt of the invoice;
3. Whether the payments has been made on time is decided on the basis of when the amounts are credited to our account.
4. With the exception of installation invoices, invoices are to be paid so that payment is received in our account in full within 14 days of the invoice date
5. We are entitled, despite any terms the purchaser may have to the contrary, to set off payments first on the purchaser's older debts, specifically first on interest, then on costs and then on the oldest debt.
6. All amounts owed by the purchaser shall become due immediately if the payment conditions are not complied with or we are aware of circumstances which, according to our due business discretion, lend themselves to reducing the purchaser's creditworthiness. In this case, without prejudice to any more far-reaching legal rights, we are also entitled carry out any outstanding deliveries only if collateral is provided or to rescind the contract after a reasonable grace period or to require compensation for damages because of non-fulfilment. We are entitled to set off our debt claims against the purchaser's debt claims irrespective of for which legal reason, even if the debt claims are due at different dates.
7. We only accept cheques as conditional payment. If we accept cheques, the debt is not extinguished until the cheques are cashed. Related fees and collection charges are to be borne by the purchaser. The retention of title for goods subject to retention of title does not expire until final payment against the cheque in accordance with the more detailed arrangements on retention of title in these terms and conditions of business.
8. If payments are deferred or made later than agreed we are entitled to charge interest at the statutory level from the due date of our debt claim. We shall pass on higher default interest. We reserve the right to claim for further losses caused by delay.
9. Deliveries to firms which are not known to us are only made in return for advance payment of the amount or on a cash on delivery basis. If the purchaser's ability to pay deteriorates or if the agreed payment conditions are not complied with, this entitles us to require immediate payment of the entire balance due.
10. Our representatives are not authorised to collect debts.

XIV. Retention of title

1. We retain the title on the items we have delivered until all payments from the business with the purchaser had been received. The retention of title extends to the drawn and recognised balanced if we have included individual or all amounts owed in current accounts. The purchaser's payment terms and conditions for individual designated deliveries do not affect the retention of title.
2. The assertion of the retention of title rights is not deemed to be a rescission of the contract. Attachment (*Pfändung*) of the item delivered by us always constitutes a rescission of the contract.
3. If purchaser joins our item to other items to form a single item or mixes it inseparably, the purchaser transfers pro rata co-ownership to us. The purchaser shall hold the item in safe custody for us free of charge.
4. If the item delivered is resold together with other goods which do not belong to us, the amount owed to the purchaser by the purchaser's buyer is deemed to be assigned in the amount of the delivery price agreed between us and the purchaser. Any modification or disapproval of the item delivered by the purchaser is always deemed as having been undertaken for us, without us being accountable for this in relation to third parties.
5. In order to safeguard our claim against the purchaser's buyer, the purchaser also assigns us the claims against a third party which accrue to the purchaser as a result of joining the item delivered to land or a building (property). If the item delivered becomes an integral part of the purchaser's land or building (property), the purchaser is required to grant us a land charge (*Grundschuld*) in the amount of 120 % of the respective amount owed to us plus 15 % interest (*dingliche Zinsen*) p.a. from the registration of the property on or in which the item in question which we have delivered is installed. If an item delivered is installed on or in several of the purchaser's properties, a collective land charge (*Gesamtgrundschuld*) on all the properties concerned is granted. If the goods are installed on another property which does not belong to the purchaser at the purchaser's instruction, the purchaser is required to provide us with security accordingly through assignment of other assets belonging to the purchaser as collateral up to the full payment of all liabilities. Goods assigned as collateral must always have a value of 120 % of our own claim.
6. The purchaser shall sell the item which is subject to retention of title only in the ordinary course of business under the purchaser's normal terms and conditions of business. It is assumed here that the purchaser will agree prolonged and extended retention of title with the purchaser's buyer. The purchaser's claim against the purchaser's buyer is immediately assigned to us in the amount of our claim. The assignment takes place on resale irrespective of whether the item delivered is sold on with or without modification, without this requiring further agreements.
7. The purchaser is entitled to collect the amount owed themselves without this affecting our authority to collect the amount owed. As long as the purchaser meets their obligations, we will not act on the assignment. We can revoke the purchaser's collection right immediately if the purchaser does not meet his obligations to us, does not make them properly or does not meet them in full, without us being required to send reminder notices. On our request, the purchaser must give us the necessary information and documents necessary to assert our claim. Without prejudice to our right to disclose the assignment, the purchaser is required to inform his debtors of the assignment on our request. The purchaser is not entitled to further assign the claims in turn if they are assigned to us. The purchaser shall ensure that the our claims from prolonged and extended retention of title always take priority over any global assignment.
8. The purchaser shall inform us immediately of any seizure by third parties of the item subject to retention of title or the assigned claims in order to enable us to assert our rights under section 771 of the Code of Civil Procedure (*Zivilprozessordnung* – ZPO). Delays in notification shall be at the purchaser's expense. The purchaser is responsible for the third party making the seizure being able to reimburse our judicial and extrajudicial costs in an action pursuant to section 771 ZPO, otherwise the purchaser shall bear these themselves in the amount of the deficit.
9. The purchaser's right to possess the item subject to retention of title expires if the purchaser does not meet their obligations to us, does not meet them in full or does not meet them properly. We are then entitled, without setting a period of grace or giving notice of repudiation of contract, to enter the purchaser's business premises and take the item which is subject to retention of title back into our possession and sell it at the best possible price by private sale or, at our option, by means of public auction, without prejudice to the purchaser's payment or other obligations to us. The sale proceeds will be offset against the purchaser's liabilities after deduction of the costs. Any surplus proceeds will be paid out to the purchaser.
10. All the above items of collateral are conditional in such a manner that, on the full settlement of the debts for which the collateral has been provided to us, the title of the item delivered automatically transfers to and assigned claims pass to the purchaser. If the value of the collateral to which we are entitled exceeds the total amount owed by the purchaser by more than 20 %, then we release the claims we are entitled to without this requiring further agreements, to the extent these claims exceed more than 20 % of the amount owed to us by the purchaser. In this case, the oldest security interests are automatically released first in each case.
11. The right to retention of title also applies in relation to carriers to whom the item is given at the purchaser's request or at our instigation.
12. In the case of foreign businesses, we retain the right of title to the delivered item until final payment of the purchase price in accordance with the respective legal standards of the country of destination. The retention of title is deemed to have been expressly agreed between us and the purchaser. If the country of destination permits other equivalent safeguards in place of retention of title, these are deemed to have been expressly agreed.

XV. Guarantee periods

1. If our provision of goods or service consists in constructing a building or work, the success of which consists in performing planning and supervisory services for this, the guarantee period is 5 years from the transfer of risk, in all other cases it is 1 year from the transfer of risk.

XVI. Guarantee/Defect

1. All claims for defects by the purchaser require that the purchaser has properly and within the time limit pursuant to these terms and conditions met their optical and technical inspection obligations due under section 377 of the German Commercial Code (*Handelsgesetzbuch* – HGB) and their obligation to give notice of defects.
2. If, unusually, an item which is not defect free is delivered and the defect was already present when the risk was transferred, only we are entitled to the right of choice from sections 437 and 439 of the German Civil Code (*Bürgerliches Gesetzbuch* – BGB) if there is a purchase agreement. If a cure is only possible with disproportionate costs, the purchaser can require a reasonable reduction of the purchase price or rescind the contract. The rights from section 440 BGB are excluded unless we have intentionally or grossly negligently breached a primary duty of the contract. If we have taken on the production of an item, the statutory provisions on the law on contracts for work and services apply. We exclude all further guarantee rights and are entitled at our choice to offer to provide a cure or under section 638 BGB a price reduction. The rights from section 634 numbers 2 and 4 BGB are excluded. If a cure chosen by us fails in individual cases and, according to the reasonable interests of the purchaser, a reduction is unacceptable, then the purchaser is entitled to rescind the contract. If we are responsible for a defect only due to slight negligence, notwithstanding the costs to be paid for a cure, we are entitled to invoke disproportionality within the meaning of section 635 (3) BGB, without being required to do so.
3. Claims for damages arising from the breach of ancillary contractual duties or the violation of the purchaser's interests and legally protected interests which the purchaser did not inform us of expressly in writing when negotiating the contract up until the point of signing the contract and notification of which we have not expressly confirmed in writing are excluded.
4. Claims arising from the violation of economic losses, lost earnings and all further claims outside the performance substrate are excluded unless we have acted with gross negligence or intent or, in an individual case, have expressly accepted liability for such claims.
5. If, in an individual case, we are to blame for breaching the following rights and duties arising from the nature of the contract, as a result of which the achievement of the object of the contract is endangered and there is therefore a claim against us, then the liability is in any case limited to the foreseeable average damage typical for the contract. We are not required to inform ourselves about or ascertain the intended use or scope of use of the item produced and/or delivered by us. Knowledge in this regard can only be held against us if the knowledge was communicated to us in good time before accepting the contract and we have expressly confirmed our awareness of it in writing.
6. The liability due to culpable injury to life, body or health is not affected by the above exclusions and limitations.

XVIII. Delay

If the delivery or production of an item is delayed due to a circumstance which does not fall in our sphere of risk, in particular if we or our suppliers cannot deliver on time as a result of industrial action affecting us or our suppliers, the delivery/manufacturing periods shall be extended by the duration of the disruption. Claims for damages are excluded in these cases unless we have acted grossly negligently or with intent.

XIX. Provision and purchaser specifications

If the buyer/purchaser requires us to use certain materials or media, then we are not responsible for these materials or media requested. Any liability for this and for defects which are to be attributed to the use of these materials or media is excluded.

XX. Determination of deadlines

Prior to claims for damages being asserted due to delay, we are in each case to be set a reasonable grace period unless we are to blame for acting with gross negligence or intent.

XXI. Set-off

Set-off against our debt claims is only permissible with uncontested or finally and non-appealably established claims.

XXII. Place of performance, place of jurisdiction, severability and applicable law

1. The place of performance for our delivery is our headquarters. The place of jurisdiction for all disputes, irrespective of whether it is a matter of proceedings in which we are the claimant or defendant, is the location of our company's registered office. We are, however, also entitled to bring an action at the location of the customer's registered office. The place of jurisdiction also applies to actions regarding cheques and bills of exchange as agreed.
2. Should a provision in these contractual provisions be or become invalid, this shall not affect the validity of the remaining provisions. In this case, a provision which comes as close as possible to the object and purpose of the invalid provision will apply in place of the invalid provision. Any loophole is to be closed by means of supplementary interpretation of the contract.
3. The contract is fundamentally governed exclusively by German law unless a different governing law is expressly agreed.