

## **General Terms and Conditions of PIA Automation Amberg GmbH, Amberg PIA Automation Bad Neustadt GmbH, Bad Neustadt**

(Version: 01.01.2018)

### **1. Scope of Application, Offer and End of Contract**

1.1. The terms and conditions herein ("T&Cs") apply to any legal relationship between

**PIA Automation Amberg GmbH, Amberg, Germany,  
PIA Automation Bad Neustadt GmbH, Bad Neustadt, Germany**

(both hereinafter referred to as "PIA") and any company, corporate body under public law and special funds under public law ("Customers"). The T&Cs herein are in particular deemed to be the framework agreement for all purchase, service and processing agreements for any goods offered by PIA ("Products") and for any other services, particularly support, maintenance, consulting and other services.

- 1.2. The T&Cs herein shall apply exclusively to any offers, sales, supplies and services and any legal relationships between PIA and its Customers. Deviating conditions of the contract partner shall only apply if they are expressly and separately confirmed by PIA in writing.
- 1.3. In principle, our offers are non-binding and subject to confirmation unless they are expressly marked as binding or contain a specific term of acceptance. Acceptance of our offers shall be carried out in writing. Verbal agreements require the written confirmation of PIA in order to take effect. Likewise, orders are only binding if they are confirmed in writing. Changes and amendments of a confirmed order require an additional order placement in written form.
- 1.4. Our offers are only valid within the time limit stated. The Customer may only refer to this when an offer has been accepted and an order placed within the specified time limit.
- 1.5. Details regarding the object of supply or service (e.g. weights, measurements, utility values, load-bearing capacity, tolerances and technical data) and representations of the same (e.g. drawings and illustrations) only apply approximately unless the applicability for the contractually intended purpose requires exact conformity. Unless expressly agreed in individual cases, such details shall not be deemed as guaranteed quality features, but as descriptions or identifications of the supply or service. Customary deviations/changes and deviations/changes which are carried out due to legal requirements or representing technical improvements as well as replacement of components by equivalent parts are permissible as far as this does not affect the applicability of the supplied item for the contractually intended purpose.
- 1.6. PIA shall inform its customers in writing of any changes, amendments or deletions that may become necessary during order processing which exceed the customary deviations/changes within the meaning of the aforementioned subparagraph 1.5 of the T&Cs herein, e.g. about additional equipment, appliances, tools and the like required for operability of the ordered product(s). The changes are deemed as accepted by the customer if PIA granted the customer an appropriate period of time to submit an express declaration together with the information; PIA obligates itself to particularly make the customer aware of the intended significance of his conduct at the beginning of the time limit.
- 1.7. The proprietary right and intellectual property right to drawings, plans and other documents shall remain with PIA unless expressly agreed otherwise in writing in individual cases. Third parties may only be granted access to such documents if PIA has given prior written consent.

### **2. Prices, Payment, Payment Default, Offset and Retention Rights**

- 2.1. Prices apply ex works unless other terms are specifically agreed upon in individual cases, including shipment, not including packaging, transportation, insurance, assembly and commissioning plus applicable purchase tax, customs duties and other public dues.
- 2.2. Insofar as the agreed-upon prices are based on our list prices, and shipment/service is to be effected more than four months after conclusion of the contract, the list prices in effect at shipment/service shall apply.
- 2.3. In the absence of conflicting agreements, payments shall be made in full immediately upon invoice issuance. However, the Customer defaults 30 days after receipt of invoice or equivalent payment schedule at the earliest, and/or 30 days after the due date and receipt of return service.
- 2.4. Should the Customer default, then the delivery/service obligations of PIA apply.
- 2.5. The Customer is entitled to offset, retention and performance refusal rights at the request of PIA only if counterclaims are determined to be legally valid or are undisputed by PIA. The Customer may only execute retention and performance refusal rights insofar as his counterclaim is based on the same contractual relationship. The Customer's warranty claims remain unaffected thereof.
- 2.6. PIA has the right to render outstanding deliveries or services only with advance payment or a security deposit, should PIA discover after conclusion of the contract that the Customer's financial standing is significantly lower than required, placing the payment of PIA's outstanding accounts at risk in the applicable contractual relationship (including additional individual orders to which the same framework contract applies).

### **3. Delivery, Partial Delivery, Default and Acceptance Default**

- 3.1. Delivery/service dates result from the agreements of the contracting parties which must be made in writing. Compliance with delivery/service dates by PIA requires that all technical questions are resolved and that the Customer fulfilled all responsibilities he is obligated to, for example furnishing required technical information, official certifications or permissions or the transmission of required documents, and - in case of an agreed advance payment - that the required terms of payment and additional responsibilities have been fulfilled. Should these requirements not be fulfilled by the Customer in a timely manner, then the delivery/service terms are extended or the delivery/service dates are adjusted according to the period of the delays attributable to the Customer, and additionally, an appropriate start-up term or a new delivery/service term or new delivery/service date is agreed upon. This does not apply if PIA is responsible for the delay.
- 3.2. Insofar as PIA does not explicitly assume procurement risk, then the delivery is subject to correct and punctual delivery of required materials; this does not apply if PIA is not responsible for the non-delivery or delay.
- 3.3. Delivery/service dates or delivery/service terms shall be regarded as met if the goods have left PIA's works or if the goods are notified to be ready for dispatch, or, should the delivery/service be delayed for any reasons which the Customer is responsible for, if the goods are notified to

- be ready for dispatch within the agreed-upon term. Should approval from the Customer be required, then, except in cases of justifiable acceptance rejection, the agreed acceptance date will be the deciding factor or alternatively the notification of readiness for acceptance by PIA. The legal provisions of acceptance defaults, as described in Clause 3.8 of these T&Cs, remain unaffected.
- 3.4. Should the delivery/service or delivery or the acceptance of the goods be delayed for reasons attributable to the Customer, then, starting one month after shipment notification or acceptance readiness notification, the costs accrued due to the delay in a minimum of 1 percent of the invoice amount for each month commenced will be charged to the Customer if he does not provide evidence that the damages/costs did not arise or were significantly lower than the aforementioned lump sum.
- 3.5. PIA is not liable for impossibility of delivery/performance or for delivery/service delays if these were caused by force majeure or other events unforeseen at the conclusion of the contract (e.g. any operation disruptions, material or energy supply difficulties, transit delays, strikes, lawful lockouts, lack of manpower, energy or raw materials, difficulties in obtaining necessary official approvals as well as the failure to deliver, incorrect delivery or untimely delivery of suppliers) which are beyond the responsibility of PIA. PIA has the right to withdraw from the contract as far as such events complicate substantially, make the delivery or services impossible or cause hindrance of not only temporary duration. In addition to an adequate start-up period, hindrances of temporary nature will prolong the delivery or service terms or postpone the delivery and service dates around the date of the hindrance or new delivery/service terms or new delivery/service dates are agreed. Insofar as due to the delay of delivery or services the Customer cannot be expected to accept the order, he may, with immediate written statement addressed to PIA, withdraw from the contract. PIA will inform the Customer of a delivery/service hindrance immediately after PIA obtains knowledge of such a matter.
- 3.6. On our part, default of binding agreed-upon terms and dates is considered to have occurred only after a written reminder.
- 3.7. If PIA is in default regarding a delivery or service or if, no matter what the reason, a delivery or service becomes impossible for PIA, then compensation for damages shall be limited to the provisions of the policies and procedures of Clause 9 of these T&Cs.
- 3.8. If the customer defaults acceptance or violates his duty to co-operate, PIA shall be entitled to claim compensation of resulting damages (including any possible extra expenditure). The right to additional claims shall be reserved. The risk of accidental loss or deterioration of a product shall transfer to the purchaser no later than at the point in time he defaults in taking delivery. Additionally, the claims PIA is entitled to from the transaction are due when the Customer defaults in accepting delivery. Should the Customer default in accepting delivery, then PIA is entitled to store the product at the Customer's risk and cost.
- 3.9. PIA is authorised to partial deliveries and partial services at any time if, within the scope of the contractual intended use, the partial delivery is of use to the Customer if the delivery of the remaining order is secured, and if the customer is hereby not subjected to substantial increased expenses or additional costs unless PIA agrees to absorb these costs.
- 4. Transfer of Perils and Shipping**
- 4.1. The risk of accidental loss and of incidental deterioration of the products passes to the Customer, even with partial delivery, on surrender of the consignment, in case of a mailing purchase at delivering the products to a forwarding agent, the haulage contractor or other persons or companies or institutions responsible for the consignment.
- 4.2. A transport insurance policy will be taken out at the Customer's express request and at the Customer's expense only unless other terms are expressly agreed upon in individual cases.
- 4.3. Should the delivery or service be delayed due to circumstances attributable to the Customer, then the risk will pass to the Customer on notification of the readiness of the consignment for dispatch.
- 4.4. Shipment shall be carried out via Deutsche Post AG, a parcel service, Deutsche Bahn AG, or a forwarding company, depending on the type, size and expedience of the shipment unless special shipment requirements are requested by the Customer. Any additional costs arising from special deliveries or express deliveries requested by the Customer will be charged to the Customer. Should PIA be in default regarding delivery, then these additional costs shall be borne by PIA. Clause 3.7 of these T&Cs applies accordingly.
- 4.5. The type of packaging is subject to PIA's discretion, based on the weight, size, transportation mode and duration of the product unless the Customer provides special packaging specifications to PIA or otherwise expressly agreed in individual cases. PIA is only obligated to dispose of packaging of any kind, particularly outer packaging and transport packaging if and to the extent to which, due to a mandatory public law, disposal obligations apply to PIA or if this was expressly agreed in individual cases. This also applies when PIA bears the costs for packaging or shipment.
- 4.6. Transit damages of any kind must be reported to the haulage carrier immediately, and PIA must be notified. If a transport insurance policy was taken out by PIA at the Customer's request, then a statement from the haulage carrier regarding the determined damages must be sent to PIA immediately, so that possible claims against the transport insurer can be made.
- 4.7. The Customer is to accept delivery of the goods supplied, even if the goods have minor defects, without affecting the Customers rights according to Clause 6 of these T&Cs.
- 5. Retention of Title**
- 5.1. PIA retains the proprietary rights to the delivered goods until all claims by PIA against the Customer arising from the business relationship are settled, including the claims arising in the future from contracts concluded simultaneously or at a later date. This also applies if all claims of PIA are included in an account current and the balance thereof is established and acknowledged.
- 5.2. The Customer is entitled to resell or process goods in which title is retained in normal course of business; but he hereby assigns to PIA all claims equivalent to the final invoiced amount including value-added tax if he holds such claims against his customers or other third parties as a result of the sale of our products, this being irrespective of whether the item was sold with or without further processing. PIA hereby accepts the assignment. The client remains authorised to recover the claim even after the transfer. PIA's right to collect the claim itself shall remain unaffected by this. PIA will not recover the claim, however, as long as the client meets his payment obligations from the collected proceeds, is not in default of payment and in particular, as long as no application for the opening of insolvency proceedings has been made and payments have not been suspended. But should this occur, then PIA can demand that the Customer discloses the assigned claims and debtors, provides the information necessary for collection, hands over related documents to PIA and gives notice of assignment of claims to the debtors (third parties).
- 5.3. Any processing, combination, mixing, blending or reshaping of goods subject to retention of title shall be performed by PIA. If the goods subject to retention of title are processed, combined, mixed or blended with other items not owned by PIA, then PIA acquires the joint ownership of the new item at the ratio of the value of the goods (invoice amount including VAT) to the other processed items at the time of processing, combining, mixing or blending. Apart from the above, the same terms apply to the item produced by processing, combining, mixing, blending, or reshaping

as to the product supplied subject to reservation of ownership. If the combination/mixing occurs in such a manner that the Customer's item is to be regarded as the principal object, then it is to be regarded as agreed that the Customer transfers a share in the title to PIA. The Customer thus stores sole property rights hereby created or joint ownership for PIA.

- 5.4. PIA has the right to insure the goods at the Customer's expense against theft, breakage, fire, water, and other damage if the Customer himself does not arrange insurance and provides proof of insurance.
- 5.5. If the Customer acts in breach of the contract, in particular in relation to payment, PIA shall be entitled to redeem the object of purchase, and the Customer shall be obliged to surrender the goods. Repossession or attachment of supplies by PIA does not constitute a withdrawal from the contract unless PIA makes an express written statement to this effect. PIA is authorised to sell the products after repossession and the proceeds of such sale will be credited to the Customer's liabilities, with deduction of PIA's reasonable sales costs.
- 5.6. When retracting goods in the case of cancellation through PIA based on contract violation on the Customer's part, especially in regard to payment default, PIA is entitled to settle the expenses resulting to PIA with the Customer's security deposit or a compensation claim.
- 5.7. If the monetary value of PIA's securities is higher than 20 percent of PIA's accounts receivable from the Customer, then PIA will, at its own discretion, release securities at the Customer's request.
- 5.8. The goods which are subject to retention of title may not be pledged to third parties or placed in escrow before payment in full of the secured receivables. The Customer shall notify PIA immediately in written form if third parties assert rights to goods subject to retention of title. In the case of attachments, confiscations or other encroachments by third parties, the Customer must file an objection referring to PIA's ownership and inform PIA immediately so PIA can institute third-party objection proceedings under Section 771 of the German Code of Civil Procedure (ZPO). If the third party is not able to reimburse PIA for court costs and extra-judicial costs of an action pursuant to Section 771 ZPO, the Customer shall be liable for the loss resulting to PIA.

## **6. Warranty, Notice of Defects and Consequential Harm Caused by Defects**

- 6.1. The Customer shall inspect the products delivered directly upon receipt.
- 6.2. The delivered product shall be regarded as accepted unless PIA is notified with regard to apparent defects, obvious quantity errors, or other shortcomings, which became apparent after an immediate, careful inspection, within 14 days of delivery of the product, or otherwise for non-apparent or hidden defects, within 14 days of the discovery of the defect, or the time at which the Customer would have discovered the defect under normal use of the product without close inspection.
- 6.3. In case of a reasonable complaint, the Customer is entitled to two attempts at rectifying the defects free of charge or replacing the product within a time limit set by PIA. Errors in quantity will be supplied retrospectively. Should two attempts at defect rectification or product replacement within a reasonable period of time be unsuccessful, then the Customer is entitled to execute legal rights. PIA is entitled to refuse rectification of defects or replacement of a product if the Customer does not fulfil his responsibilities to PIA.
- 6.4. If a defect is the result of defects in products of third party manufacturers or suppliers which PIA cannot rectify due to concession or factual reasons, then PIA will, at their own option, assert existing warranty claims against the manufacturer or supplier for account of the Customer or transfer them to the Customer. According to the stipulations set forth by these T&Cs, warranty claims against PIA in the case of such defects remain only if legal prosecution of the aforementioned claims against manufacturers/suppliers was unsuccessful or is unpromising, e.g. due to insolvency. The limitation of the pertaining warranty claim of the Customer against PIA is inhibited throughout the duration of such a litigation.
- 6.5. In particular, warranty claims shall not be assumed in the following cases: Unsuitable or improper use by the Customer or by third parties commissioned by the Customer, in particular through use of insufficiently qualified personnel, faulty assembly or operation, natural wear (parts subject to regular wear and tear), faulty or negligent usage, improper maintenance, unsuitable operating materials, faulty construction work, an unsuitable base, chemical, electrochemical or electrical influences unless PIA is responsible for these circumstances or the Customer proves that the defects were not caused by the aforementioned circumstances.
- 6.6. PIA is also not obligated to comply with their warranty obligations if the defects of products were caused by defective materials which the Customer supplied or if product defects were caused by adherence to third party construction plans which the Customer requested.
- 6.7. Agreements reached with the customer for a single case delivery of used items takes place under exclusion of any warranty.
- 6.8. Warranty claims exceeding those regulated in Clause 6 cannot be asserted.
- 6.9. The warranty period is one year from the date of delivery, or, if acceptance is required, from the date of acceptance.
- 6.10. PIA is liable for consequential harms caused by defects or for loss of earnings attributed to a product defect in cases of intentional or grossly negligent breach of obligations by PIA or by a legal representative or an assistant employed by PIA; PIA is liable in the event of damage resulting from injury to life, body or health, even in cases of slight negligence. Any further liability for consequential harms caused by defects is excluded.
- 6.11. The above exclusions and limitations of liability shall not apply in cases of mandatory legal liability, particularly in accordance with product liability law or in cases of assumption of a warranty.

## **7. Software, Licenses and Industrial Property Rights**

- 7.1. Should the Customer request order execution according to specific construction plans, then he is liable for the non-violation of third party property rights. The Customer insofar releases PIA from any requests for claims from third parties; the Customer also bears any costs of defensive measures including legal disputes.
- 7.2. Should software be comprised within the scope of delivery, then the Customer shall be granted a non-exclusive right to use the supplied software, including its documentation. It shall be provided for use on or for the intended product. Using the software on more than one system is prohibited.
- 7.3. Software provided by PIA is standard software which is not individually produced for the Customer unless expressly agreed otherwise. Supply contracts regarding software are thus sales contracts. The contractual parties agree that, even with the best available technology, it is impossible to develop software which will operate faultlessly under all usage conditions. In case of third party manufacturer/supplier software, PIA will provide the Customer with the manufacturer's/supplier's original user documentation. PIA is not obligated to supply any further documentation.
- 7.4. The Customer may only copy, revise or translate the software or convert it from the object code to the source code to the extent permitted by law (Sections 69 a et seq. German Copyright Act - UrhG). The Customer is obligated not to remove or change manufacturer information – in particular copyright notes – without PIA's express prior consent.
- 7.5. If the software of a manufacturer/supplier is the subject of PIA's legally due service, then the Customer may utilise this software beyond that only in accordance with the licensing terms/terms of use of the respective manufacturer/supplier; at PIA's request, the Customer must attest his

- agreement with these conditions in writing, also to the manufacturer/supplier. These licensing terms/terms of use shall be provided to the Customer on request, even before conclusion of a contract.
- 7.6. All other rights in the software and documentation, including copies, shall remain with PIA and/or the software manufacturer/supplier. The granting of sub-licenses by the Customer is not permitted.
- 7.7. The Customer agrees not to modify software without express approval from PIA and also agrees to install any software updates made available free of charge by PIA or the respective manufacturer/supplier. The Customer agrees to activate software settings which allow software updates to be made available on request, and to leave previously activated settings intact.
- 7.8. The Customer also agrees to use opportunities for retrieving free software updates of which PIA or the respective manufacturer/deliverer notifies him.
- 7.9. According to the stipulations of this Clause 7, PIA vouches for the exemption of intellectual property rights or third party copyrights of products supplied by PIA. Each contractual party will immediately notify the other contractual party in written form if claims should be exercised against him regarding the violation of such rights.
- 7.10. Should the Customer withdraw from the contract, then the Customer's usage rights of software licensed or otherwise provided by PIA ends. The Customer must, at the option of PIA, either (i) return all software, including any copies or (ii) destroy all software, including any copies and confirm this in writing to PIA. The enforcement of defence to actions for breach of warranty of quality or title and respective rights to refuse performance/rights to retention of the Customer due to defects remain unaffected thereof.
- 7.11. In the event that the products supplied by PIA violate intellectual property rights or copyrights of a third party, PIA will, at their option and their own expense, amend or substitute the products supplied by PIA in such a manner that they no longer violate any rights of third parties, but that the products supplied by PIA continue to fulfil their functions as contracted, or will provide the Customer the right of use through entering a license agreement. If PIA fails to do so within a reasonable period of time, then the Customer is entitled to withdraw from the contract or to lower the purchase price. Any compensation claims of the Customer are subject to the restrictions of Clause 9 of these T&Cs.
- 7.12. In the event of infringement of products obtained through third party manufacturers or suppliers delivered by PIA, PIA will, at their own option, exercise their claims against the manufacturer or supplier for the account of the Customer or will transfer them to the Customer. Claims against PIA in these cases remain according to the stipulations of this Clause 7 if legal implementation of the above claims against the manufacturer and supplier was unsuccessful or is unpromising, e.g. due to insolvency. Throughout the duration of such a legal dispute, limitations of relative claims of the Customer against PIA are restricted. Additionally, the regulations in Clause 9 of these T&Cs apply.
- 8. Secondary Contractual Obligations**
- 8.1. If the products supplied by PIA cannot be used by the Customer according to the contractual terms because of negligent execution or because of no execution at all of proposals or advice or other such accessory obligations, particularly PIA's operating and servicing instructions for the product supplied by PIA, be it before or after entering into the contract, the stipulations contained in Clause 9 of these T&Cs apply accordingly, excluding any further claims by the Customer.
- 9. Liability Limitations**
- 9.1. PIA's legal liabilities are limited as follows only to events of slight negligence with the exception of the exemptions in paragraph 2: (i) In the event of breaches of material contractual obligations (cardinal obligations) from the contractual relationship, PIA shall be liable up to the amount of the typical foreseeable losses; (ii) PIA is not liable in the event of violations of insignificant obligations from the contractual relationship. Cardinal obligations are contractual obligations which enable the realisation of the contract in the first place and upon the observance of which the Customer can rely.
- 9.2. The aforementioned liability limitations do not apply in cases of mandatory legal liability, in particular according to product liability laws, in the event of the assumption of a warranty or for damages resulting from death, injury or damage to health.
- 10. Applicable Law, Jurisdiction**
- 10.1. All legal relations between PIA and the Customer are governed exclusively by the German Law as it applies to the legal relations between domestic parties.
- 10.2. Legal venue and place of jurisdiction for any disputes resulting directly or indirectly from this contractual relationship is for PIA Automation Amberg GmbH the District Court of Amberg and for PIA Automation Bad Neustadt GmbH the District Court of Schweinfurt, as far as the customer is a merchant in the sense of the German Commercial Code (HGB), a corporate body under public law, or special asset under public law. This shall also apply if the Customer transfers his residence or his habitual residence abroad or if his residence or habitual residence is unknown at the time of commencing legal proceedings. The right of a contractual party to take legal action against the other contractual party remains unaffected.