

# PRK TECHNOLOGIES GMBH, HAMBURG

## GENERAL TERMS AND CONDITIONS:

### § 1 Orders

1. All deliveries including subsequent sales of our goods and services are subject to these general terms and conditions, even if not explicitly mentioned.
2. The buyer may not transfer or assign any rights arising from the contract. Cessions are subject to our written approval.
3. Offers/quotations are subject to change. Orders will be accepted only if confirmed in writing. Invoicing and delivery of goods to replace the order confirmation.

### § 2 Prices

1. Prices are net cash, ex works or ex store without any cash or other discount or rebate plus VAT, freight, transportation, packing charges, insurance etc.

### § 3 Payment Terms

1. Unless otherwise agreed upon, payment of the invoice amount is due and payable without any deduction within net 30 days of the date of invoice. After 30 days a penalty interest will be charged.
2. Offs are possible only with undisputed counterclaims or as per legal requirements.
3. Money orders, drafts and discount bills of exchange will be only accepted subject to the redemption and in lieu of payment including all and any collection and discount charges.
4. The buyer can only exercise a retention right, as far as it is based on the specific sales contract and is ascertained indisputable or legally.
5. If the buyer is in default of payment with two consecutive installments, we may, without prejudice to any other rights, set a deadline of two weeks with the indication that we will refuse fulfillment of the contract by the buyer. After the grace period being expired, the seller has the right to withdraw from the contract in writing, without prejudice to further claims for damages.
6. In case of default, the buyer will bear interest charges and collection costs. Interest shall be calculated at 5% above the base rate of German Central Bank plus taxes.
7. Payments from the buyer, which are not directly paid to the seller or a person expressly authorized by him, shall not lead to fulfillment.

### § 4 Delivery/dispatch

1. Part deliveries are allowed and being considered as independent deliveries.
2. Delivery terms specified by us are not binding. The seller shall be deemed in default if he is at fault and has been demanded for delivery in reasonable time by the buyer six weeks after exceeding the non-binding delivery date or delivery period.
3. Acts of god, shortage of materials, strikes, lockouts, release operations and transportation problems etc. shall release the seller from his obligation to deliver.
4. Any risk of loss passes over to the buyer at the time of loading and shipment of goods. The buyer is obliged to get ready for goods notified immediately. If shipment is delayed at the request or fault of the buyer, the display of readiness for shipment is the same.
5. According to 6 paragraph 1 sentence 6 and 7 Verpackungsverordnung (VerpackV) of 21<sup>st</sup> August 1998 (Federal law Gazette I p. 2379), as last amended by Article 6 of the Act of 19 July 2007 (Federal Law Gazette I P. 1462), issued the following notice: "The seller is obligated to take back those packaging of products not showing the sign of a nationwide system of disposal (such as the Green Point of the Dual System of Germany or the "RESY" icon), and take care for its reuse or disposal. To further

clarify the return the buyer can share with such products to the seller. Seller will inform buyer about a local collection point or a disposal company in his area who will take over the packaging without charge. If this is not possible, the buyer may ask the seller to have it collected. The seller may reuse or dispose the packaging according to the Verpackungsverordnung.

## **§ 5 Warranty/Withdrawal**

1. Used parts, machinery, equipments and other accessories are sold with the exclusion of any warranty liability for open and hidden defects without any assurance of properties. A warranty does not apply in every case. The sale of new parts is basically the manufacturer's warranty. The seller gives the buyer does not own quality or durability guarantee within the meaning of 443 Civil Code to the offered goods. The buyer can see the product documentation to see if there is a manufacturer's warranty, which is additional to the guarantee of the seller. Warranty from a manufacturer's warranty establishes a separate legal relationship with the manufacturer and directly to engage with this claim. The seller's liability extends only to the replacement of parts that have proven to be replaced by his own fault or a fault of the material. The seller is entitled to cede its place to the buyer's warranty claims against the supplier.  
For instruments whose performance is measured on operating hours, the warranty covers most to the manufacturer's / supplier's works specified number of hours guaranteed. Further claims such as assembly, disassembly costs, and compensation for consequential damages, rescission and reduction are excluded.
2. No warranty obligations apply if the purchased goods have been modified by a third party or if the buyer has failed to follow the operating instructions, in particular if checks have not been carried out properly.
3. The warranty shall also become invalid if the buyer has tried to remedy the defect by third parties without prior written consent of the seller.
4. The buyer is always obliged to check the goods immediately and to inform seller about defects in writing within eight days after delivery. Further treatment, use or installation of the product will hinder any warranty claims. Buyer must immediately inform seller about any hidden defects at the first signs of such defects and be accompanied by appropriate evidence. Immediately means a period of 5 working days.
5. The seller may demand the return of the goods (if necessary for the manufacturer) to verify the alleged defects. For legitimate substantial defects, the seller will provide replacement or repair at its own discretion. In the case of three repair attempts at repair shall be assumed. The buyer is responsible for the burden of proof for the defects, the date of recording and timeliness of the complaint.
6. As far as a buyer exercises his legal cancellation right, he has to carry the regular costs of the return exceptionally when (1) the delivered product corresponds to those ordered and at the same time the price of the returned items do not exceed 40.00 €, or (2), the delivered product corresponds to the one ordered and the buyer has not yet paid the purchase price or an agreed part hereof, provided that the price of the sold items are higher at the time of cancellation.
7. Claims for supplementary performance, expenditures and compensation of damages shall expire after one year from the data of delivery.

## **§ 6 Liability**

1. The seller and his legal representatives are only liable for deliberate actions and gross negligence. Liability for slightly negligent breach of essential contractual obligations is limited to the average damage which is predictable and typical, but in any case limited to a maximum of 10% of the net sales price. A liability for the violation of non-essential contractual obligations is excluded. These limitations shall also apply to claims under product liability and tort.

3. Damage claims due to impossibility of performance, breach of contract, culpa in contrahendo and tort are excluded against the seller as well as against its vicarious agents as far as legally permissible.
3. The seller is principally not liable for lost profits, consequential damages or any indirect damages.

### **§ 7 Event of Default**

1. In the event of default of payment of the buyer, the contract, at the request of the seller, will be converted into a lease. In this case, irrespective of the effective use of the goods, the seller has to pay the rent which is customary at the place for a similar issue. The seller is entitled to set off any down payments of the buyer as rental (advance) payment.
2. Any of the seller's rights to withdraw from the contract or to claim for compensation of damages remain unaffected.

### **§ 8 Withdrawal**

1. On becoming aware of liquidity problems of the buyer, the seller is entitled to require security for the performance. This is without prejudice to the seller's right to withdraw from the contract, after deducting any of his expenditures. The same applies if the financial situation of the buyer worsens in the course of a longer term contract.
2. Acts of God entitle the seller to rescind the contract in whole or in part, to the exclusion of any claims of the buyer.
3. If the buyer withdraws from the purchase contract, without the fault of the seller, the buyer has to pay a penalty equal to 25% of the purchase price amount for lost profits and expenditures unless seller proves that he has suffered a higher damage.

### **§ 9 Reservation of title**

1. Title of the goods supplied by the seller remain with him until all open claims (including balance) as well as associate costs (e.g. freight, exchange charges, interest, attorney fees etc.) are settled in total. The retention of title also applies to future claims from the business relationship and will not cease to exist if the claims are included in a current account balance.
2. As long as we retain ownership, the buyer may dispose of the goods by way of sale, collateral assignment, pledge, alternation, processing, installation etc. only with the prior written consent of the seller. The same applies to a lease or otherwise release of our goods to third parties.
3. Resellers are authorized in the ordinary and normal course of business to resell the goods delivered by us. The buyer transfers his claim for the purchase price together with all ancillary right arising from such resale or for any other legal grounds against the third party buyer to us. Unless instructed otherwise by the seller, the buyer is authorized to collect accounts receivable from the sale by himself. He may not assign and transfer such claims to third parties. The buyer is obliged to disclose the resale upon our request and give us all the required information and documents required.
4. If a third party, especially for seizure or exercise of an entrepreneurial lien, the buyer has to notify the seller in writing without delay and to point to the third party the right of ownership of the seller. Failure to give notice to the third party buyer for any resulting damage is committed, all the lifting of order and the replacement of the product cost, especially legal costs will be borne by the buyer, unless they can be collected by third parties.
5. In case of processing, mixing and combining with other goods not belonging to the seller, the seller obtains (co-)ownership in the new product in proportion to the value of the retained goods. The buyer takes care of the co-property for the seller. The assignment of the claim from the resale shall be in such cases, up to the invoice value of the goods.

6. In case the reserved property is used and installed by the buyer in fulfillment of a contract with a third party, the buyer hereby transfers and assigns in advance his rights against the third party up to the amount of the invoice value of the subject goods with all ancillary rights, including any claim for damages against the seller. In case of default, the buyer is obliged to disclose the prior assignment his third buyer is known.
7. If the buyer is in breach of contract, especially in default of payment, the seller is entitled to immediately take back the reserved property without court interference or to demand assignment of the right of the buyer against the third party. The buyer hereby already gives his consent that the seller or his agent at any time can enter the land and premises on in which goods are stored and collect them.
8. If the buyer fails to comply with his payment and insurance obligations and the obligations arising from the retention of seller's title, or the buyer stops payment or files for insolvency, the entire outstanding balance will become due and payable, even in case of bills of exchange with later maturity. If the entire outstanding balance is not paid immediately, the buyer loses his right to use the goods. The buyer in this case is obliged to immediately release the goods to the seller. This withdrawal and seizure of the goods by the seller does not mean a withdrawal from the contract. Notwithstanding this, the seller, however, is entitled to step back from the contract. All expenditures incurred by taking back the purchased items are to be borne by the buyer. The seller is entitled to commercialize the goods by private sale or otherwise without prejudice to the payment obligation of the buyer.

#### **§ 10 Data Protection**

The seller uses the buyer's inventory of data only to comply with its contractual obligations, in particular for processing orders. All buyers' data will be stored and processed in compliance with the relevant provisions of the Federal Data Protection Act (BDSG) and the Telemedia Act (TMG). The buyer has right to free information, correction, blocking and deletion of stored data and can go at any time by mail, fax or e-mail to the seller. Personal data is not used without the express and revocable consent of the buyer to third parties. Excluded are service companies that need data to process your order as if paid transport and shipping. In these cases, the limited amount of data is provided to the necessary minimum.

#### **§ 11 Place of performance and jurisdiction**

1. The place of performance for the delivery of the purchased items and all other mutual claims and jurisdiction is Hamburg.
2. Disputes arising from cross-border contracts including the validity of the contract will be settled under exclusion of the ordinary courts by an arbitration tribunal in accordance with the rules of the Hamburg Friendly Arbitrage. On the substance of the dispute, German law applies. Place of jurisdiction is Hamburg. The number of arbitrators shall be three. The language of the proceedings is German.
3. Should one or more provisions of these terms are invalid or void, the validity of the remaining provisions shall not be affected.
4. Changes or additions to the sales contracts must be in writing. This also applies to an amendment of this written form requirement.