

# General Terms and Conditions of Business of Proton Motor Fuel Cell GmbH for Goods and Services

As at: 19 July 2018

## 1. Scope and general provisions

1.1 Deliveries of goods based on purchase agreements, performance under a contract for work and materials pursuant to Section 650 German Civil Code (BGB), performance under a contract for work and services pursuant to Section 631 BGB, and performance under a contract for services pursuant to Section 611 BGB by the company PROTON MOTOR Fuel Cell GmbH (hereinafter 'PM') shall be governed exclusively by these General Terms and Conditions of Business for Goods and Services (hereinafter 'GTCs').

1.2 These GTCs also apply to all future business relationships even if their agreement is not explicitly repeated.

1.3 These GTCs apply exclusively to business transactions with customers designated as entrepreneurs in accordance with Section 14 BGB.

1.4 Application of Customer's general terms and conditions of business is hereby expressly disclaimed. Reiteration of this disclaimer after PM's receipt of any such corresponding terms and conditions or any corresponding reference by Customer to its own terms and conditions is unnecessary. Specifically, the provision of services or their assumption does not involve PM's agreement to such terms and conditions.

1.5 PM retains all rights with respect to documents and materials (e.g. quotations, calculations, samples, technical drawings, concepts, lists of specifications) given to Customer; these documents and materials must not be made accessible to third parties without the express written consent of PM. This applies particularly where documents and materials are labelled 'confidential'.

1.6 Permanent sales employees, marketing/distribution or service staff of PM have no authorization to make verbal ancillary agreements or give verbal assurances extending beyond the content of the respective individual contract.

## 2. Conclusion of the contract; individual agreements

2.1 Unless expressly specified otherwise in PM's respective quotation, quotations offered by PM are always non-binding.

2.2 An order by Customer constitutes a binding contract offer. PM may accept this offer within ten (10) days by submitting written confirmation of the order or by sending or handing over the goods ordered or executing the services ordered, thus establishing a contract (hereinafter 'individual contract').

2.3 In cases of conflict between the provisions in the respective individual contract and these GTCs, individual contracts take precedence.

2.4 Information given on PM's website and in brochures, advertisements and catalogues of PM, specifically drawings, illustrations, dimensions, data sheets, simulation results or other data and information concerning performance, is only binding if expressly designated as such in writing in the respective individual contract.

## 3. Subject of the contract

3.1 The performance to be supplied is defined in writing in the respective individual contract.

3.2 The agreed condition of the goods and other services to be supplied is stated in the respective individual contract, the respective product description and other technical drawings or documents on which the individual contract is based. Customer is not entitled to any condition of the goods and services to be supplied which extends beyond this agreed condition.

3.3 Where the order concerns customer-specific contract manufacturing, specifically the production of a detailed concept (technical specifications) based on information provided as a rough concept by Customer (customer specifications), Customer undertakes to provide PM with precise details of the condition and quality of the performance upon conclusion of the contract and to provide PM with all information required in this respect.

3.4 Where applicable the user documentation (user manual) described in the individual contract will be handed over with the requisite product. The individual contract sets forth the language (German or English), form (printed hard copy, electronic form in product software, on machine-readable data media or transmitted by email) and the content of the user documentation and – in the case of printed hard copy – the number of copies of the user documentation to be supplied to Customer. The user documentation supplied is intended to enable the Customer to use the devices or equipment correctly. Customer is not entitled to any condition or quality of user documentation which extends beyond this agreed condition.

3.5 Software is supplied exclusively in object code form; provision of the source code is not covered by this contract. Where a device or item is supplied together with the software necessary for the control or operation of the device, the software may only be used on the agreed device.

## 4. Granting of rights and limitations of use

4.1 Software, specifically device control software, databases, documentation, plans, concepts and similar documents, and all work results (hereinafter summarized as 'work results') created by PM within the scope of the respec-

tive underlying individual contract are produced for PM by the staff deployed by PM in the fulfilment of their tasks and according to the instructions issued by PM. Unless expressly specified otherwise in the underlying individual contract, PM is entitled to all industrial property rights and copyright rights of use and exploitation to these work results. In the case of databases created by PM, PM is deemed the creator of the database in the meaning of Section 87a German Copyright Act (UrhG).

4.2 Unless otherwise agreed in the respective individual contract, PM grants Customer non-exclusive permanent rights to the work results produced or supplied by PM in fulfilment of its delivery obligations as set forth in the underlying individual contract, comprising the right to use the work results and any applicable accompanying user documentation for the purpose set forth in the individual contract in line with the provisions given in the following sections (hereinafter 'intended use'). Where a device or item is supplied together with the software necessary for the control or operation of the device, PM will grant the Customer – subject to the following Section 4.3 – simple permanent (non-exclusive) rights of use to the software in the form of object code and, where applicable, the associated user documentation, for the purpose of operation of the device together with the items that form the subject of this Contract.

4.3 Subject to the provisions set forth in the following sections and with the exception of the statutory scope (specifically as per Sections 69 d, 69e UrhG) and unless specifically permitted in the respective individual contract, Customer may not

- reproduce, edit or process the software products or documentation;
- remove references to copyrights, brands or other property rights;
- decompile or otherwise modify software products to reverse-engineer their various manufacturing stages.

4.4 Under Section 69d sub-section 1 UrhG, Customer is only entitled to undertake changes, editing, processing or reworking of the software within the meaning of Section 69c No. 2 UrhG if this process is necessary to the intended use of the software including remedying of a fault in the software. Before faults are remedied by Customer or Customer's agent, Customer must first grant PM a reasonable period to remedy the fault.

4.5 Customer is permitted to reproduce or decompile the software to establish interoperability with other programs within the scope of, and under the conditions set forth in, Section 69e UrhG if the additional requirement is fulfilled that PM has failed to provide the necessary data for this process within a reasonable period. Customer will treat all information gained from decompilation or supplied by PM with confidentiality.

4.6 Customer is entitled to give or sell the software to a third party as a one-off process if the following cumulative requirements are fulfilled: Customer undertakes to cease its own use of the software and hand all copies of the software made by it to the third party or to destroy them. Customer will immediately notify PM in writing of the name and address of the third party. Customer will undertake to obtain a written undertaking from the third party to comply with the terms of use of this contract. The rights of use assigned to Customer under this contract expire upon the transfer of the software.

4.7 Customer is not entitled to hire or rent the software to, or otherwise make the software available to, third parties on a permanent or temporary basis without PM's written consent, unless expressly agreed otherwise in the individual contract. Employees or contractors of Customer working at Customer's premises who require access to the software to fulfil their duties of employment do not constitute third parties within the meaning of this contract.

4.8 Use of the software within the scope of ASP (Application Service Providing), outsourcing or out-tasking is not permitted.

4.9 Copyright notices, serial numbers or labels must not be removed or changed. Copies of the software or user documentation produced by Customer must be labelled as such and a copyright notice of the producer added.

4.10 Special provisions for third-party software:

4.10.1 Where agreed in the individual contract, rights to third-party software supplied by PM or included in the products of PM are granted in accordance with the licensing terms of the third party. Customer acknowledges the corresponding contractual provisions and terms of use of the producer of the third-party software as legally binding and undertakes to comply with same.

4.10.2 Where a separate licensing agreement directly between Customer and the provider of the third-party software is required, PM will notify Customer of same. In this case Customer must conclude the licensing agreement directly with the provider of the third-party software.

4.10.3 Otherwise the provisions in sections 4.2 to 4.9 above apply; in cases of conflict the licensing terms of the provider of the third-party software apply.

## 5. Payment and terms of payment

5.1 The amount payable for the contracted goods and services to be supplied by PM is always set forth in the respective individual contract. Where no payment is agreed and no express written notice is given that the goods and services are free of charge, a reasonable payment is deemed to have been agreed.

5.2 All prices of PM are given exclusive of the applicable rate of statutory Value Added Tax.

5.3 Prices are given ex works or ex PM's production facilities and are exclusive of carriage, postage and packing.

5.4 Unless otherwise agreed in the individual contract, payment for goods based on sale agreements and performance under a contract for work and materials in the meaning of Section 650 German Civil Code (BGB) is due im-

mediately and in full upon receipt of the invoice by, and delivery of the performance to, Customer.

5.5 Unless otherwise agreed in the individual contract, payment for performance under a contract for work and services pursuant to Section 631 BGB is due in full upon acceptance of the performance.

5.6 In cases of default of payment PM is entitled to charge statutory rates of interest. Further compensation claims are not excluded.

## **6. Delivery and performance periods; part-deliveries**

6.1 Times of delivery and execution are agreed in the individual contract.

6.2 Where no specific agreement concerning the time of performance has been made, PM has the right to define the time of performance at its own discretion. In doing so PM will base its decision on the amount of work necessary to fulfil the contractual performance and the capacities available to it, taking into consideration its workload from other orders and any justified interests of Customer of which it has been informed.

6.3 Where PM is prevented from fulfilling its contractual performance by an unforeseeable extraordinary event which it is beyond PM's control to avert even by exercising all reasonable care, particularly natural disasters, disruption to energy supply or business operations, government intervention, labour disputes or other cases of force majeure, the agreed delivery periods will be extended by the equivalent period of obstruction and by a further reasonable period for resuming operations after the obstruction has been removed. Where PM's fulfilment of contractual performance is rendered impossible in such events, PM will be released from obligations to fulfil contractual performance.

6.4 Commencement of delay in delivery is determined by the statutory legal provisions. A reminder by the Customer is necessary under all circumstances.

6.5 PM is entitled to supply part-deliveries unless Customer cannot reasonably be expected to accept same.

## **7. Carriage, transfer of risk and transport insurance**

7.1 Unless otherwise agreed in the individual contract, delivery items are shipped at Customer's expense.

7.2 Risk is transferred to Customer when the delivery items are handed over to the carriage agent or have left the supplier or storage site for the purpose of delivery.

7.3 At Customer's written request, transport insurance will be concluded at Customer's expense.

7.4 The goods must be inspected for damage in transit immediately upon delivery. Complaints must be entered in the carriage documents and confirmed by the deliverer/driver. Complaints/notification of damage must also be submitted to PM immediately in writing. The duty to examine the goods and report defects remains unaffected.

## **8. Customer's obligations**

8.1 The Customer is obliged to cooperate broadly without charge and to support PM in fulfilling the performance contracted as far as is reasonable, required and expedient.

8.2 Customer will appoint a responsible person in writing who will hold all decision-making authority and rights of attorney required for the purpose of contractual fulfilment.

8.3 Customer will allow PM unrestricted access to the delivery items and contractual performance for the purposes of remedying any faults.

8.4 Customer will provide assistance in dealing with insurance cases.

8.5 Customer undertakes to examine the planning documentation, specification lists, statements of work, technical statements and quality assurances where this is specified in the individual contract or as far as Customer has the background information to be able to do this.

8.6 If Customer detects a system failure in the device software or data logger, Customer will immediately complete the required backup procedure for the error log data to enable fault analysis to be run on the basis of the data.

8.7 Customer will provide information on its own organization where this is significant for contractual fulfilment.

Customer will secure PM's know-how, industrial property rights and copyrights, together with any such rights of third parties, against access by Customer's staff and third parties.

8.8 Customer will obtain all approvals and permissions from third parties or official bodies that are relevant for a project.

8.9 Unless otherwise agreed in the individual contract, the following provisions apply to setup and assembly:

8.9.1 Customer will be responsible for providing the following in good time at its own expense:

a) All excavation and construction works and other activities outside the industry sector relevant to this contract, including all necessary specialists and semiskilled workers, materials and tools required;

b) All items and materials required in assembly and operation start-up such as scaffolding, lifting machinery and other equipment, fuels and lubricants;

c) Power and water supplies at the point of use, including all connections, heating and lighting;

d) An adequate number of suitable large dry lockable rooms at the point of assembly for storage of machine parts, apparatus, materials, tools etc. and adequate work and staff rooms for the assembly staff including appropriate sanitary facilities; in addition, Customer must implement the same measures for the protection of the property and possessions of PM and the assembly staff at the assembly site as it would for the protection of its own property;

e) All protective clothing and protective equipment required by the specific conditions at the assembly site.

8.9.2 Before setup or assembly commences, all required supplies and items must be provided at the assembly or setup site and all preliminary works in advance of setup must be so far advanced that assembly or setup can commence according to the contract and continue without interruption. All access routes and the assembly or setup site must be levelled and cleared.

8.9.3 If setup, assembly or operation start up is delayed for reasons beyond PM's control, Customer will, within reason, bear the costs of waiting time and any additional travelling costs necessary for assembly staff.

8.9.4 On request, Customer will immediately provide PM with information on the working hours of the assembly staff and on the completion of setup, assembly or operation start up.

8.9 Any further specific duties of cooperation on the part of Customer will be set forth in the individual contract where applicable.

## **9. Acceptance of performance under a contract for work and services pursuant to Section 631 BGB**

9.1 Where the performance to be fulfilled by PM constitutes performance under a contract for work and services pursuant to Section 631 BGB requiring acceptance upon completion, this performance is governed by acceptance in line with the following acceptance provisions.

9.2 PM will notify Customer in writing when the performance is ready for acceptance inspection. Immediately after receipt of this notification of readiness for acceptance, Customer will undertake the acceptance in collaboration with PM.

9.3 If the acceptance inspection shows that the performance matches the statement of work or list of specifications in the current version or that any deviations therefrom only affect use of the performance to a negligible extent, Customer will immediately provide PM with written acceptance of the performance.

9.4 Unless otherwise agreed in the individual contract, acceptance is deemed to have been declared if PM has set a reasonable period for declaration of acceptance after completion of the work and Customer fails within this period to refuse acceptance stating at least one defect.

9.5 The above provisions apply mutatis mutandis to the acceptance of part-deliveries. PM is entitled to require part-acceptance of such performance as Customer can make economically viable use of, irrespective of overall acceptance of performance. Part-acceptance thus granted is deemed genuine acceptance within the meaning of Section 640 BGB.

9.6 PM is entitled to require part-payment for part-deliveries, which – unless otherwise agreed in writing – will reflect the proportion of the overall performance accounted for by the accepted part-performance.

9.7 Unless otherwise agreed in the individual contract, PM will only grant rights to productive use of the performance after acceptance of all performance and payment of all invoices in full.

## **10. Subsequent changes to performance (change request)**

10.1 'Change request' is the term given to requests by Customer for changes to be made with respect to the agreed specifications or other features of performance that represent a deviation from the original contractual contents of the respective individual contract.

10.2 PM will consider the requested changes at its own discretion for a reasonable additional fee. Any delivery periods and time schedules will be extended accordingly in favour of PM if the agreed changes cause delays.

10.3 At Customer's request PM will examine Customer's change requests for a fee on the basis of time incurred and, where applicable, will submit a quotation for realization of the changes. PM is under no obligation to submit a quotation and implement the changes.

## **11. Duty to examine the goods and report defects within the meaning of Sections 433 and 650 BGB**

Claims and rights in the event of defects of quality in goods based on sale agreements and performance under a contract for work and materials within the meaning of Sections 433, 650 BGB require Customer to fulfil its duty to examine the goods and report defects within the meaning of Sections 377, 381 subsection 2 German Commercial Code (HGB). Customer must submit a written complaint of any faults immediately after their discovery.

## **12. Customer's rights and claims in the event of defects of quality in goods**

12.1 Unless otherwise set forth in the following provisions, statutory provisions apply to rights and claims of Customer in the event of defects of quality in goods based on sale agreements pursuant to Section 433 BGB and con-

tracts for work and services pursuant to Section 631 BGB and performance under a contract for work and materials pursuant to Section 650 BGB.

12.2 A defect in quality is deemed to exist if the delivered goods or other performance does not exhibit the agreed condition.

12.3 In the event of faults or defects, at Customer's request PM will provide subsequent performance by remedying the fault or defect (rectification) or supplying a fault-free item (redelivery) at PM's discretion or – in the case of performance based on a contract for work and services pursuant to Section 631 BGB – by producing new work (re-manufacture). Customer may require PM to supply a form of subsequent performance other than that selected by PM if Customer's acceptance of PM's selected form of subsequent performance would be unreasonable. PM's rights under Sections 635 subsection 3, 439 subsection 3, 275 subsections 2 and 3 BGB remain unaffected.

12.4 Where Customer sets PM a reasonable time limit within which to provide subsequent performance and this subsequent performance is unsuccessful within this period, Customer is entitled to further rights of abatement or withdrawal of the contract at its own discretion and may, where PM is responsible for the faults or defects, also be entitled to claim compensation in lieu of performance or claim reimbursement for futile expenses as per Section 284 BGB within the scope of the agreed terms of limitation of liability. However, Customer is only entitled to withdraw from the contract and claim compensation instead of performance in full in the event extensive faults or defects. The setting of time limits, declaration of withdrawal from the contract and claims of compensation in lieu of performance are only valid when submitted in writing. In cases defined in law under Sections 281 subsection 2, 323 subsection 2, 440 BGB Customer need not set a time limit.

12.5 In deviation from statutory provisions, if a time limit set by Customer for the fulfilment of subsequent performance expires without success Customer may only withdraw from the contract and/or claim compensation in lieu of performance if Customer notifies PM of same at the time of setting the time limit at the latest.

12.6 PM has no liability in cases where editing, processing or modification of the contractual performance has been undertaken by Customer or Customer's agent, unless Customer furnishes proof that this was not the cause of any faults which occurred.

12.7 If research into the faults reported by Customer shows that Customer has no claims or rights against PM within the scope of this Section 12, PM is entitled to invoice Customer for any expenses incurred during said research on the basis of PM's current price list at the time of research in the event that Customer has recognized, or negligently failed to recognize, that there is no fault and Customer itself is responsible for the cause of the defect reported.

12.8 In deviation from Sections 438 subsection 1 no. 3, 634a subsection 1 no. 1 BGB, Customer's rights to submit claims for defects have a period of limitation of twelve (12) months. The period of limitation begins from the time of delivery for performance governed by a sale agreement pursuant to Section 433 BGB or a contract for work and materials pursuant to Section 650 BGB, and from the time of acceptance for performance governed by a contract for work and services pursuant to Section 631 BGB. However, statutory provisions concerning periods of limitation apply in cases of intentional or grossly negligent violation of obligations, fraudulent concealment of a defect, in rem surrender claims of third parties within the meaning of 438 subsection 1 no. 1 BGB, personal injury, claims under the German Product Liability Act and guarantees; in the case of guarantees this only applies unless otherwise stated in the respective guarantee agreement.

### **13. Customer's rights and claims in cases of defects of title**

13.1 Unless otherwise stated in the following provisions, statutory provisions apply to Customer's rights and claims in cases of defects of title in performance based on sale agreements pursuant to Section 433 BGB and contracts for work and services pursuant to Section 631 BGB and performance under a contract for work and materials pursuant to Section 650 BGB.

13.2 A defect of title is deemed to exist if the rights required for the contractual use of the deliverables or services performed (hereinafter 'contractual performance') are not effectively granted to Customer.

13.3 Where a third party claims violation of intellectual property rights against Customer for the contractual performance, Customer will (i) notify PM immediately in writing, (ii) assign PM the authority to conduct legal proceedings and settlement negotiations with the third party at its own expense and as far as possible alone, and engage in legal action only with PM's approval, and (iii) provide PM with all reasonable support and with all necessary information and documents available to Customer and with all necessary authorizations and powers of attorney.

13.4 In the case that the contractual performance represents a violation of the rights of third parties, PM may elect to provide subsequent performance by (i) modifying the contractual performance in such a way that it no longer represents a violation of rights while retaining the contractually agreed scope of functions for Customer, or (ii) purchasing rights of use for Customer which are adequate for the purposes of the contract and enable Customer to continue making use of the contractual performance, or (iii) replacing the contractual performance with a different form of performance which is of equivalent value to the agreed condition of the contractual performance for Customer and does not incur any significant disadvantages for Customer.

13.5 Otherwise the provisions governing defects of quality in the above Sections 12.3, 12.4, 12.5, 12.6 and 12.8 apply mutatis mutandis to cases of defects of title.

### **14. Guarantees**

14.1 Technical information, specifications and statements of works are solely intended as descriptions of the condition of the performance and do not constitute independent guarantees or guarantees of condition or service life pursuant to Section 443 BGB.

14.2 Statements by PM concerning the performance only constitute independent guarantees or guarantees of condition or service life pursuant to Section 443 BGB when they are explicitly marked word for word in writing as 'independent guarantee' or 'guarantee of condition' or 'guarantee of service life' by the management of PM.

### **15. Liability limitations**

15.1 Liability limitations are always agreed individually between the parties in the individual contract. Where no individual agreement is made, PM is liable – irrespective of the legal grounds – for compensation claims or claims to reimbursement of futile expenses within the meaning of Section 284 BGB in accordance with the provisions in the following subsections.

15.2 In accordance with statutory provisions, PM holds unlimited liability for damages from personal injury to life, limb or health, for damages based on intent or gross negligence and for damages within the scope of protection of a guarantee, guarantee of condition or of service life pursuant to Section 443 BGB unless otherwise stated in the respective guarantee agreement.

15.3 PM's liability for damages other than those specified in Section 15.2 which are based on a slight negligent violation of material contractual obligations, is limited to reimbursement or replacement of foreseeable damages typical of the contract. Material contractual obligations within the meaning of sentence 1 are such obligations the fulfilment of which enables the contract to be duly executed and upon the fulfilment of which Customer regularly relies.

15.4 In cases under the above Section 15.3 maximum liability in each case of damages is limited to the amount of the respective order value for the respective individual contract.

15.5 Otherwise further liability for damages other than those specified in Section 15.2 which are based on a slight negligent violation of contractual obligations other than those specified in Section 15.3 is excluded.

15.6 Liability under the German Product Liability Act remains unaffected.

15.7 The above provisions apply to the same extent to personal liability of PM's staff, performing agents, vicarious agents, legal representatives and bodies.

15.8 If Customer violates its obligation to conduct due data backup procedures, within the above provisions governing data loss the amount of PM's liability is limited to such damages as would have occurred under due regular data backup by Customer.

### **16. Retention of title**

16.1 Transfer of ownership of the goods takes place subject to full payment of all claims due against Customer from all business relationships including future claims. If the value of all collateral rights to which PM is entitled under these provisions exceeds the value of all secured claims by more than 20%, at Customer's request PM will release the excess collateral rights, the items of collateral to be released being at the discretion of PM.

16.2 Customer accepts the reserved goods for PM into customary commercial custody and will insure the goods against fire, theft and transport risk.

16.3 Throughout the duration of the retention of title Customer may not pledge the reserved goods or use them as security. Their resale by Customer is only permitted within the scope of an orderly business transaction. In the event of resale of reserved goods, Customer assigns its claims against the purchaser to PM to the value of the payment claims to which PM is entitled, irrespective of whether the goods are resold without or after processing. PM accepts the assignment. Customer is also authorized to collect this claim after its assignment. PM's authority to collect the claim itself remains unaffected; however, PM will refrain from collecting the claim as long as Customer duly fulfils its obligations of payment without arrears and in particular a petition for the opening of insolvency proceedings has not been filed and payments have not been suspended. If this is the case, PM may require Customer to notify PM of the assigned claims and their debtors, to provide all information necessary for the claim to be collected, to furnish the accompanying documents and to notify the third-party debtors of the assignment; PM is also entitled to do so.

16.4 Any editing, adaptation, processing or reshaping of the goods by PM is always for PM as a manufacturer within the meaning of Section 950 BGB and does not represent any obligation on the part of PM. In this case PM's contingent right to the goods continues to apply to the reshaped goods. Where the goods are processed or combined with other goods, PM automatically receives rights of co-ownership of the new item, in the same proportion as the value of the reserved goods to the value of the new goods in the case of processing and in the same proportion as the value of the reserved goods to the value of the other goods in the case of combination. If Customer is sole owner of the new goods, Customer assigns PM co-ownership to the proportions giv-

en and holds the goods free of charge for PM. If the goods created by processing or combination are resold, the agreed prior assignment applies only to the amount equivalent to the value of the reserved goods.

16.5 Customer will inform PM immediately in the event of attachments, seizures or other third party dispositions or interventions.

16.6 Where Customer violates its obligations, particularly in the event of payment arrears, PM is entitled to withdraw from the contract and take back the reserved goods after the expiry of a reasonable time limit set for Customer to effect performance; statutory provisions governing cases where the time limit may be waived are not affected. Customer has an obligation to return the goods. If Customer falls wholly or partly into arrears with a payment or ceases payments or if other justified doubts arise concerning Customer's ability or willingness to pay, Customer will no longer be entitled to dispose of the goods supplied by PM. In this case PM may withdraw Customer's right to collect a claim from the recipient of the goods. PM is then entitled to require information concerning the recipients of the goods, to notify them concerning the transfer of the claim to PM and to collect Customer's claims from the recipients of the goods.

#### **17. Violation of industrial property rights of third parties by instructions of Customer**

17.1 If PM is obliged to effect contractual performance to Customer's instructions or to samples, drawings, models etc. provided by Customer, Customer guarantees that the instructions or items it provides do not violate industrial property rights of third parties. PM has no obligation to conduct investigation into the position with respect to industrial property rights.

17.2 Customer must reimburse PM for any damage arising to PM from violation of third-party industrial property rights or from claims concerning any industrial property rights.

#### **18. Confidentiality**

18.1 Customer will treat all information or objects representing business or industrial secrets or designated confidential ("confidential information") which are provided or communicated by PM within the course of establishing or executing the contract as confidential for an indefinite period and will use them solely for the purpose of executing the contract.

18.2 Confidential information particularly includes quotations, contracts and agreements, documents, technical documentation and drawings, samples and other information which is confidential in content.

18.3 Customer will secure this confidential information in such a way that it is protected from access by unauthorized third parties. Customer's one-off rights to pass on the delivery items will remain unaffected. Customer will supply this confidential information only to its staff and other third parties requiring access to the information for the purpose of performing their duties with respect to Customer and only within the scope of the authorized use granted to Customer on the basis of this contract. Customer will inform staff and third parties granted justified access to the confidential information concerning their obligation of non-disclosure and will obtain written undertakings from these persons to maintain confidentiality and use the confidential information only within the scope given above unless the persons are already obliged on other legal grounds to maintain confidentiality to this level.

18.4 Irrespective of any deviating provisions in the individual contract, such information is not deemed confidential information if it (i) is or becomes generally known without any fault of Customer; (ii) was already known to Customer at the time it was communicated within the scope of the respective individual contract and was not subject to any limitation concerning its use or disclosure; (iii) was already in Customer's possession without violating any legal obligations before the respective individual contract was concluded and was not subject to any limitation concerning its use or disclosure; (iv) was developed independently by the Customer disclosing the information without violating the respective individual contract; (v) must be disclosed by Customer owing to statutory provisions, under the prerequisite that Customer will inform PM immediately in writing of a disclosure and will assist PM in preventing disclosure by having recourse to judicial remedies.

#### **19. Data protection**

19.1 The parties will observe all relevant statutory data protection provisions and obtain the undertaking of their staff or other fulfilling agents to comply with these provisions before the staff commences its activities.

19.2 As a general principle, PM's fulfilment of the Contract does not have the purpose of processing or using personal data on the Customer's orders. If, in exceptional cases, PM's access to personal data cannot be excluded, the Customer will conclude a written agreement with PM concerning contract data processing under Section 28 DSGVO or will ensure that at the time of provision of the service all corresponding data privacy consent forms necessary for PM to fulfil its contractual obligations without infringing data protection provisions have been obtained from the persons involved.

#### **20. Offset and retention**

20.1 Customer may only offset claims of PM arising from the individual contract against counterclaims if the claims are undisputed, ready for a decision or res judicata.

20.2 Under the conditions given above, Customer has a right of retention if Customer's claims are based on the same contractual relationship.

#### **21. Concluding provisions**

21.1 Amendments and/or additions to the contract are only valid when made in written form, as is the decision to waive this requirement of the written form.

21.2 Customer requires the prior written agreement of PM to assign rights and obligations from this contract. Section 354a German Commercial Code (HGB) remains unaffected.

21.3 PM is entitled to use subcontractors to fulfil its contractual obligations.

21.4 The contractual relationship between the parties is governed by the law of the Federal Republic of Germany excluding any statutory provisions referring to other legal systems; application of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.

21.5 If Customer is a businessman, legal entity under public law or a special fund under public law, the exclusive place of jurisdiction for disputes arising from or in connection with this contract is PM's domicile. PM is entitled to bring action against Customer at any other legal place of jurisdiction.

21.6 If any provision of these Terms and Conditions is or becomes invalid or unfeasible or proves to contain an omission, the remaining provisions of these GTCs or individual contract shall remain unaffected if it may be assumed that the parties would have concluded the contract in any case. The invalid provisions will be deemed to be replaced with a provision corresponding to the statutory provision. If the parties have overlooked an item requiring regulation when drawing up the contractual regulations, the regulation that they would have drawn up in awareness of the contractual omission and under consideration of the interests of both sides will be deemed to have been agreed upon.