

General Terms and Conditions for Sale

1. General

These General Terms and Conditions of Sale shall apply in as much as and so far as the parties have made no other written agreements in individual cases. The General Terms and Conditions of Sale ("Contract") shall be effective only upon Polymetrix AG's ("PMX") written confirmation of order. Any modifications have to be implemented by annex to be lawfully signed by PMX and the respective buyer ("Buyer"). Buyer's general terms and conditions of business do not become part of the Contract even if PMX accepts payments by Buyer and makes deliveries.

2. Prices

All prices shall be deemed to be net, ex works (Incoterms 2020), in Euro, without any deduction whatsoever. Any and all additional charges, such as but not limited to, freight charges, insurance premiums, fees for export, transit, import and other permits, as well as for certifications, shall be borne by Buyer. Likewise, Buyer shall bear all value-added taxes, sales taxes, profit taxes, income taxes, social contributions, registration fees, as well as all other kinds of taxes, fees, levies, custom duties and the like which are levied against PMX, its related companies, its factories or its personnel in connection with the Contract.

3. Terms of Payment

The terms of payment are according to the confirmation of order. The agreed dates of payment shall also be observed by Buyer even if transport, delivery, installation, commissioning or taking over is delayed or prevented due to reasons not attributable to PMX, or if minor parts are missing or if post-delivery work, which does not prevent the supplies to be delivered under the Contract ("Supplies") from being used, is necessary. The retention of payments or the setting-off against any counter-claims shall be excluded.

If Buyer is overdue with an agreed payment, PMX, without prejudice to its legal rights, shall be entitled to suspend the further execution of the Contract, to stop the fabrication or to retain the deliveries which are ready for dispatch. With effect from the agreed due date, Buyer shall pay interest on the outstanding amount at a rate of four (4)% over the 12-months-LIBOR for the contractual reference currency valid at the due date. If Buyer is overdue with a payment or the establishment of an agreed security for more than two weeks, the entire balance of payment shall be due immediately.

4. Retention of Title

PMX remains the owner of the entire Supplies until the complete receipt of the agreed payments. Buyer authorises PMX to enter the retention of title in public registers or records and shall be obliged to give any signatures requested.

5. Delivery

The delivery time shall start as soon as the Contract is entered into the necessary technical documents of Buyer have arrived completely at PMX, the agreed payments and securities are given and the required official permits are granted. The delivery time shall be deemed to be completed when the contractually agreed delivery Incoterms 2020 has been fulfilled. Polymetrix AG is not liable for adherence to delivery times by sub-suppliers selected by Buyer.

The delivery time shall be reasonably extended if events which are unforeseeable and/or uncontrollable ("Force Majeure") such as epidemics, pandemics, acts of God (e.g. earthquake, flooding), mobilisation, war, acts of piracy, revolution, labour conflicts, boycotts, accidents, serious breakdown in the works or governmental actions prevent the compliance with the delivery date. Partial deliveries are allowed.

PMX shall not be liable for the delivery times by sub-suppliers selected by Buyer.

The delivery time shall be extended if Buyer changes the original order or is overdue with its contractual obligations, especially if Buyer has delayed the delivery of the necessary documents, has delayed the agreed payments and securities or is overdue with the work to be carried out by Buyer.

The delivery shall be deemed to be accepted if no substantiated written complaint is made by Buyer within five days from the date of contractual delivery.

The liquidated damages as defined in this Article shall be applicable if the delay is solely attributable to PMX. The liquidated damages shall be zero point five (0.5) % of the respective contract price of the delayed Supplies per full week of delay up to a maximum of five (5) % of the total contract price and shall only be applicable after a two (2) week grace period. Liquidated Damages for documents shall be five hundred (500) EUR/CHF per full week of delay. The aggregate amount of Liquidated Damages shall be five (5) % of the total contract price. The Liquidated Damages as described in this Article shall be Buyer's sole and exclusive remedy for PMX's delay.

Title to the Supplies shall be transferred to Buyer after PMX has (i) received full payment in accordance with the Contract or (ii) after contractual delivery (Incoterms 2020) whichever occurs earlier. Risk of loss or damage to the Supplies shall pass to Buyer upon contractual delivery (Incoterms 2020) of the Supplies.

6. Packing

Packing shall not be returnable.

7. Risk of Loss and Insurance

The transfer of risk of the Supplies shall pass to Buyer according to the agreed delivery terms Incoterms 2020. If dispatch is delayed for reasons not attributable to PMX, the Supplies shall be stored and insured at the cost and the risk of Buyer.

Transport shall be executed at the cost and risk of Buyer according to the applicable contractual delivery terms Incoterms 2020. Buyer shall be responsible for taking out insurance for delivery against risks of any kind. Buyer shall contact its insurer and freight forwarder immediately in case of damages or losses.

8. Drawings, Technical Documentation and Software

Brochures and catalogues are not binding. Data contained in drawings and technical documents are only binding if they are explicitly stipulated as such and are attached and/or included in the Contract. PMX shall remain owner of all intellectual property rights and of the drawings and technical documents delivered by PMX. They shall not be made available to third parties. If no order is placed, all drawings and technical documents are to be returned immediately to PMX. PMX shall not provide any manufacturing drawings whatsoever to the Buyer.

As far as software is included in the Supplies, all rights to that software remain with PMX respectively its sub-suppliers. PMX grants to Buyer a non-exclusive right to use the delivered software, whereby the right to sublicense shall be excluded except to Buyer's customer. The right is limited to the contractually agreed use. The software may only be reproduced or made available to third parties with the prior written consent of PMX.

Buyer may only reproduce, re-elaborate, translate the software or convert the object code to source code for uses permitted by law. Buyer shall not remove the manufacturer's indications, in particular the copyright references, and shall not modify them without prior written consent from PMX.

9. Installation and Commissioning

Buyer is solely responsible for installation and commissioning of the Supplies. If PMX offers technical assistance or such technical assistance is already agreed in the Contract for the installation and/or commissioning of the Supplies, the resulting costs shall be charged to Buyer.

If PMX is responsible with technical assistance of installation and/or commissioning according to the Contract without the installation and/or commissioning being carried out by personnel of PMX, PMX is liable for any defects, delay or failure to fulfill its agreed performance guarantees only if Buyer proves that such circumstances are attributable to PMX's gross negligence or wilful misconduct in the instruction of the local personnel.

The tools used, auxiliary materials as well as surplus materials provided by PMX, shall remain the property of PMX and shall be returned at Buyer's cost upon completion of installation to PMX at Buyer's cost.

10. Acceptance

The Supplies shall be deemed to be accepted if no substantiated written complaint is made by Buyer within two weeks calculated from the date of commercial use of the Supplies or latest twelve (12) months after contractual delivery whichever occurs earlier. The acceptance is further considered as being completed if Buyer refuses to participate in an agreed acceptance inspection or does not sign an acceptance certificate reflecting the facts truthfully.

PMX shall not later than at the date of delivery, provide information and drawings as specified in the Contract which are necessary to permit Buyer to commission, operate and maintain the Supplies. PMX shall not provide manufacturing drawings of the Supplies.

11. Free Consultation

Any free of charge technical consultation shall be outside of any pre-contractual or contractual obligations. PMX shall not be liable for free consultations, especially with respect to the correctness of the contents of the consultation.

12. Mechanical Warranty

The mechanical warranty starts at readiness for dispatch and is valid for twelve (12) months from that date.

PMX shall be responsible to repair or replace, at PMX's sole discretion, DAP Buyer's plant site (Incoterms 2020) excluding any tax, any parts which, before the expiry of the mechanical warranty period, are proven by the Buyer to be defective due to bad materials, faulty design or poor workmanship. The warranty for repaired and/or replaced parts shall be twelve (12) months from the date of repair and/or replacement up to a maximum warranty period of twenty-four (24) months after the beginning of the warranty period. The right to repair and/or replace shall be Buyer's sole remedy for Seller's defect subject to Article 15. If a part is still defective, despite a replacement or repair, PMX is entitled to take back the defective part against reimbursement of the received payments.

The warranty contained in this section will terminate immediately if Buyer or a third party undertakes inappropriate or improper modification or repairs or if the Buyer, in case of a defect, does not immediately take all appropriate steps to mitigate damages and notify PMX in writing of its obligations to remedy such defect or install non-OEM spare parts. Excluded from PMX's warranty and liability for defects are all deficiencies which cannot be proven to have their origin in bad material, faulty design, poor workmanship of the goods, including but not limited to deficiencies resulting from normal wear and tear, improper maintenance, operation out of specifications, failure to observe the operating instructions or deficiencies resulting from other reasons beyond PMX's control. PMX explicitly excludes any warranty for erosion, corrosion and cavitation.

13. Performance Guarantee, Performance Test and Acceptance

The performance test, if agreed to for the Supplies, shall take place latest four (4) weeks after both Parties' signature of certificate of mechanical completion.

After seventy-two (72) hours of stable operation of the Supplies at specified and agreed guaranteed capacity and quality, both Parties shall agree on the date of performance test.

The performance test shall be executed as agreed in the Contract.

If the performance guarantees set forth in the Contract are met, the performance test is deemed to be successfully completed, and both Parties sign the certificate of acceptance. With that signature the Supplies are deemed accepted.

Minor deficiencies that do not impact the commercial operation shall be reported in a separate "punch list", to be signed by both Parties and attached to the signed certificate of acceptance. PMX shall be responsible to remedy the deficiencies as soon as possible as agreed upon by Parties.

If the performance test demonstrates that the Supplies do not meet the agreed performance guarantees and such non-meeting is solely attributable to PMX, the Parties agree that the performance test can be repeated twice within a time period to be agreed between the Parties.

In case the performance test cannot be completed successfully due to reasons solely attributable to PMX, PMX shall pay agreed liquidated damages as sole and exclusive remedy for such non-completion. Thereafter the certificate of acceptance shall be issued and signed by both Parties.

If the performance test cannot be carried out due to reasons attributable to Buyer within an agreed time frame, the Parties shall mutually agree in writing upon the time of execution of the performance test. Both Parties shall sign the certificate of commercial use and state the newly agreed date of performance test.

However, the performance test shall be completed latest within six (6) months after both Parties' signature of certificate of mechanical completion. The cost of additional on-site assistance incl. travelling costs shall be borne by Buyer.

Buyer shall at its expense make available the necessary raw materials, energy, etc., as well as qualified personnel for such performance guarantee tests. If within two (2) months from receiving the written complaint, PMX is not given an opportunity to prove the guaranteed parameters, then those parameters are deemed to be as specified.

14. Consequential Damages and Limitation of Liability

Notwithstanding anything to the contrary in the Contract, including all documents making part thereof, and to the maximum extent permitted by law, in no event shall PMX be liable to the Buyer by way of indemnity, or by reason of any breach of Contract or of statutory duty or by reason of tort (including but not limited to negligence) for any direct financial loss, loss of profit, loss of contracts, interruption or loss of production, loss of use, loss of opportunity or business, any indirect, punitive, special or consequential damages whatsoever or howsoever arising that may be suffered by Buyer. Buyer further agrees to defend, indemnify and hold harmless PMX from any claim made by the end-user or Buyer's customers for such losses. The remedies of the Buyer set forth herein are exclusive, and except in respect of PMX's legal liability for personal injury or death, PMX's liability with respect to any contract, indemnity, tort (including negligence), under any warranty, strict liability or otherwise shall not exceed twenty-five percent (25%) of the total contract price, unless claims arise from gross negligence or wilful misconduct of PMX. No term or condition of the Contract intends to exclude or restrict a party's legal liability for personal injury or death.

15. Termination

Either Buyer or PMX may notify the defaulting party on a breach of a material obligation of the Contract with proper reasons in writing. Within fifteen (15) calendar days, both parties shall agree on mitigation measures with both parties' efforts. If the defaulting party fails to cure a breach of a material contractual obligation with the agreed mitigation measures in the agreed timeframe, the notifying party may terminate this Contract upon fifteen (15) calendar days' written notice ("Termination Notice") to the defaulting party. If the defaulting party fails to cure a breach of a material obligation within thirty (30) calendar days of receiving said written Termination Notice, the termination becomes effective. A termination of this Contract by either Buyer or PMX is without prejudice to any and all rights accrued up to the date of such termination.

This Contract may be terminated by written notice by either Party at any time during the duration of the Contract if the other Party shall file in any court or agency, pursuant to any bankruptcy and/or insolvency statute or regulation of any state, province or country, a petition in bankruptcy or insolvency or for reorganization or for an arrangement or for the appointment of a receiver or trustee of that Party or of its assets, or if the other Party proposes a written agreement of composition or extension of its debts, or if the other Party shall be served with an involuntary petition against it, filed in any insolvency proceeding, and such petition shall not be dismissed within eight (8) weeks after the filing thereof, or if the other Party shall propose or be a Party to any dissolution or liquidation, or if the other Party shall make an assignment for the benefit of its creditors (each, an "Insolvency Event").

16. Data Protection

in Accordance with any applicable data protection laws and/or regulations, the Buyer agrees that PMX is entitled to process the Buyer's personal data within the scope of the business relationship between the Parties or to transfer the processing of data to a third party in Switzerland and/or abroad. Furthermore, both parties agree to adhere to any applicable data protection laws and regulations.

17. Intellectual Property Rights

The property, copyright, design rights and all other intellectual property rights in all plans, drawings, designs, specifications and all other documents provided by PMX shall remain with PMX. However, the PMX grants to the Buyer an irrevocable, non-exclusive, non-terminable, royalty-free license to copy and make use of any scope of supply for any purposes relating to the Contract.

18. Export Control

PMX and Buyer confirm to comply with all applicable export and re-export control laws and regulations and sanctions measures in force during the validity of this Contract, including but not limited, to Swiss State Secretariat for Economic Affairs (SECO) regulations on Dual-Use Goods, Specific Military Goods and Strategic Goods (Goods Control Act). The Buyer will not import, export, directly or indirectly, any of the Supplies to a location or in a manner that at the time of import and/or export requires an export license or other governmental approval, without first obtaining the written consent to do so from the appropriate agency or other governmental entity in accordance with applicable law.

19. Confidentiality

Neither Party shall disclose to a third party any information, despite not being marked as confidential, received from the other Party without prior written consent. Nothing in this Contract prohibits disclosure of information which is (i) in the public other than as a result of a breach of this Article; (ii) is received from a third party provided that it was not acquired directly or indirectly by that third party as a result of a breach of this Article; or (iii) is required to be disclosed by law or any government or governmental body, authority or agency having authority over a party. PMX is allowed to use Buyer's name, plant site and capacity of the plant to communicate with service providers in case it is necessary to fulfil this Contract.

20. Jurisdiction, Applicable Law, Arbitration

Laws of Switzerland shall apply to the Contract with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG).

Any disputes arising out of or in connection with the Contract shall be settled amicably. If an amicable solution should not be possible, any disputes arising in connection with the Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators. Each party shall appoint one arbitrator, and the Chairman shall be appointed by the two arbitrators. Place of arbitration shall be Zurich, Switzerland. The arbitral procedure shall be held in the English language.

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