

Terms of Delivery and Payment

valid since 01.01.2015

For use against:

1. a person who, in time of conclusion of the contract, acts in their commercial or independent professional activity (entrepreneurs);
2. legal person under public law or public special assets

I. General

1. All goods and services of Primacon GmbH (Primacon) are subject to the following conditions and any separate contractual agreements. Deviating terms of the purchaser from this condition will not be part of the contract, even if Primacon has accepted the order.
2. The contract is only concluded upon written confirmation sent by Primacon. The order confirmation can also be sent via email. The conditions are also the basis of the provision of services in electronic commerce.
3. Primacon reserves all ownership and copyrights of physical and non-physical objects and information that was passed on to the customer in the context of cooperation. This information may not be disclosed to third parties. Primacon is only allowed to pass on information provided by the customer to a third party with their consent.

II. Price and payment, fulfillment

1. Unless otherwise agreed, the prices are "ex works". Prices exclude the packaging costs.. The work is also the place of performance, . Tax shall be added to the amount prescribed by law.
2. Unless otherwise agreed, payment is due immediately after delivery and without any deduction to the account of the supplier. Calculated for the payment is the individual delivery.
3. Invoices for repairs or servicing work and the supply of spare parts payment has to be made immediately in full.
4. The purchaser only has the right to withhold or offset payments against them, if and to the extent recognized by Primacon, his counterclaims were undisputed or legally binding.
5. Starting with the occurrence of a default Primacon can calculate, interest at the rate of eight percentage above the base rate. The maturity interest at the rate of three percentage above the base rate will remain unaffected.
6. Unless stated differently in the order confirmation, the prices are defined by the price list stated at the time of the contract. The so applicable rates must be adjusted enhancing the conditions at the time of delivery, should be between the date of conclusion of the contract and the agreed delivery more than 4 months and demonstrable price increases have occurred that increase the necessary expenses of Primacon by more than 5%.
7. The purchaser becomes responsible for the costs occurred by sending an agreement from the place of performance.
8. In addition to the delivery an installation of the delivered item is agreed. Delivery to the assembly also remains at the expense of the customer. The Purchaser shall pay the agreed remuneration, the necessary additional costs, such as travel costs and expenses of the installation personnel.
9. In the implementation of training services, those prices apply which are valid at the time of execution of the training agreement, unless it was stated differently in the order confirmation.
10. The customer has to bear any charges arising from an international payment transaction.

III. Delivery time and delays

1. The delivery time and date of acceptance is derived from the order confirmation. The delivery date is only approximate, so that a delay by Primacon of up to 6 weeks is still permissible. The compliance of the deadline by Primacon requires that all commercial and technical issues - all the obligations incumbent on the customer as well

as additional obligations - have been met. If this is not done, then the delivery time will be extended accordingly. This shall not apply if and as far as Primacon is responsible for the delay. If the purchaser is responsible for delays in shipment or acceptance, he will be charged the cost thereby incurred from the delay time.

2. If the delivery period is not observed due to force majeure, labor disputes, breakdowns at Primacon or due its suppliers, or based it on other events, which inhibit Primacon without fault from supplying the delivery by the agreed date, the respective dates and deadlines move according to the duration of the disturbances caused by these circumstances. Primacon will inform the customer of the start and end of such circumstances as soon as possible. If any of the above problems occur, leading to failure in delivery of a sustainable, Primacon is entitled to withdraw from the contract.
2. Should Primacon only be able to part deliver the batch, this does not entitle the purchaser to withdraw from the entire delivery. The Purchaser only has rights regarding parts of the performance, unless he has a legitimate interest in refusing the delivery in total. If such an interest is not recognizable, the purchaser is obliged to accept the partial delivery after the contract and to pay for it.
3. The delivery deadline is met if the delivery item has left the plant by the end of the period or the delivery has been announced. If the shipment is delayed at the request of the Purchaser, the Supplier shall be entitled, after setting the expiry of a reasonable period of time, to dispose of the delivery item and to deliver to the purchaser within a reasonably extended period.
4. In case of delay in delivery, Primacon is liable under the statutory provisions. The right to self-performance of third parties or through procurement is limited according to VI. 2.

IV. Passing of Risk, Acceptance

1. The risk of accidental loss or accidental deterioration of the goods shall pass-even in part-delivery to the customer if the delivery item has been dispatched or made available for collection and the customer has been informed about this. This also applies to any other circumstances that lead to a delay in delivery or service and for which the purchaser is responsible.
2. All claims in connection with a faulty or improper delivery against the transport company are as a precaution, assigned to the customer. Primacon is only liable if proper care was missing by the choice of the transport company.
3. If acceptance is to be made, the customer is, after commissioning by an employee of Primacon GmbH, obliged to make the acceptance immediately. The acceptance occurs after commissioning and will be logged by the handover protocol. If the commissioning does not happen within 14 days after notice for the dispatch or acceptance has been given, the acceptance shall be deemed to have occurred. The acceptance is also considered as made when the subject is brought into use. The Purchaser shall not refuse the acceptance due to minor defects.

V. Retention of title

1. The supplier retains title of the delivered goods until all claims of the supplier against the Customer arising from the business relationship, including claims arising in future, from simultaneous or subsequent contracts, are settled. This shall also apply if individual or all claims of the supplier are included in a current invoice and the balance is drawn and recognized. In breach of contract, in particular default in payment, the supplier is entitled to recover the delivery item after due notice and the purchaser is obliged to surrender. Due to the retention of title, the supplier may only demand the delivery item when it is withdrawn from the contract. In the event of garnishment or other interventions of third parties, the purchaser shall notify the supplier immediately.

2. The purchaser is obliged, as long as the property has not been transferred to him, to treat the delivery with care. In particular, he is obliged to insure the goods against theft, fire and water damage at replacement value. If maintenance and inspection work is performed, the Buyer shall execute at his own expense. The supplier is entitled to insure the goods at the expense of the Purchaser against theft, breakage, fire, water and other damages if the customer does not proof the insurance completely.
3. The Purchaser is entitled to resell the delivery item in the ordinary course of business. However, he assigns to the supplier all claims arising from the resale against his customers or the third parties. The Purchaser is allowed to collect these claims even after the assignment to the supplier. The right of the supplier to collect the claims remains unaffected. The collection authority expires if:
 - the customer is in default of his payment obligations towards the supplier or
 - it is revoked or
 - an application is filed for the commencement of insolvency proceedings.

The supplier may then request that the customer disclose the assigned claims and their debtors, provide all information necessary for collection, hand over the relevant documents and informs the debtors of the assignment, if not already done by the supplier.

If the merchandise is resold together with other goods which do not belong to the supplier, the claim against the buyer for the amount agreed upon, between supplier and customer delivery price, is deemed as assigned.

4. As long as the retention of title remains, the purchaser shall not pledge or transfer the ownership for security.
5. In breach of contract, in particular default in payment, Primacon is entitled to recover the delivery item after due notice and the purchaser is obliged to surrender.
6. The application for opening insolvency proceedings entitles Primacon to a return of the delivered goods.
7. If the purchaser acc. Section V.2. resold the delivered goods in the ordinary course of business, Primacon can require him to disclose the assigned claims and their debtors to provide all information necessary for the establishment, to hand over all the necessary documents and inform the debtors (third parties) of the assignment.
8. Primacon is obliged to release the securities upon request of the customer insofar as the realizable value of securities exceeding the secured claims by more than 10% - the choice of the released security is up to Primacon.

VI. Liability for defects

For material and legal defects Primacon ensures under exclusion of further claims, provisory to paragraph VII the following guarantee:

1. Material defects

a) Delivery will be made accordingly to the standard specifications or the agreed specifications. Characteristics of the goods which can be expected by the public statements of the supplier or those of its agents, in particular in catalogs, brochures, etc., in advertising or labeling of goods, or on the basis of a usage of the customer shall only be included to the agreed quality if Primacon has offered them in a written and binding offer or in an order acknowledgment.

b) Warranties are only binding if Primacon designated as such in a written confirmation and has also retained its obligation under the warranty in detail. The provision of samples does not constitute any agreement unless this has been explicitly agreed in writing with the Customer.

c) The determination of the suitability of the delivery item for a specific purpose applies to the user. Data and information as part of a consultation by Primacon does not release the customer from its own auditing requirements and tests.

d) It is the duty of the buyer to check the delivered goods immediately upon delivery / installation of the agreed contractual quality. If he fails to do so or if the buyer does not check the product in the necessary scope or if visible defects, including wrong deliveries, are not pointed out immediately after delivery / installation in writing, the delivery shall be deemed as approved. Non-visible defects shall be considered approved if they were not pointed out immediately in writing after its discovery, at the latest 12 months after delivery / installation.

d) Primacon is not liable, provisory to Section VII.2., for defects of used goods. A lack of prior inspection of the goods by the customer, can not arise liability of Primacon, neither to open and hidden defects.

e) Removal of defects through Primacon:

1. Primacon repairs the defects on all parts, which turn out to be defective due to a situation before the transfer of risk, without charge, with their choice to repair or replace the goods free of defects. The replaced parts shall become the property of Primacon. If such a defect is found, Primacon must be notified in writing immediately.
2. For the execution of repairs and replacements, the Purchaser shall, after consultation with Primacon, give the time and opportunity to undertake necessary work. Otherwise, Primacon liability, subject to Section VII 2, is excluded for the consequences. The right to self-remedy the defect by the purchaser or third parties is unaffected thereof, in urgent cases of danger to operational safety or to prevent excessive damage. Primacon must be informed of this situation immediately. The resulting costs which were necessary expenses may claim reimbursement from Primacon by the purchaser.
3. Primacon will take care of the costs for the replaced part if the complaint proves to be justified, including shipping.
4. The right to withdraw from the contract is under the statutory provisions, if Primacon – under the statutory exceptional cases – does not repair or replace the defect in the reasonable deadline. If only a minor defect exists, the Purchaser shall only be entitled to a rebate. Besides that the right to reduce the agreed price is excluded. Further claims are determined only by Section VII 2.
5. No warranty is given for the following cases: unsuitable or improper use, faulty assembly or commissioning by the customer or third parties, natural wear and tear, faulty or negligent handling, improper maintenance, improper equipment, damaging environmental influences - unless Primacon should be responsible for them.
6. If the purchaser or a third party repairs or replaces improperly, Primacon is not liable for the consequences arising therefrom. The same applies to changes made to the object of delivery if they were not previously approved in writing by Primacon.

Legal deficiencies

7. Every delivery will be done with the best knowledge and belief of Primacon in the country of the place, free of industrial property rights or copyrights (rights) of others. If a third party claims for infringement of property rights by the delivered or contractually used goods against the buyer, Primacon is liable to the Purchaser as follows: Primacon shall at its option and at its own expense obtain for the delivery in question a right of use, change the delivery item so that the property right is not infringed or replace the delivery with perfect goods. If that is not possible under reasonable conditions, the Purchaser shall have the statutory rights of rescission or reduction. The

obligation to pay damages shall be governed by the statutory provisions referred to in paragraph VII of the limit of liability.

8. The commitments written in Section VI. 7 are, subject to Section VII, final in the case of rights or copyright. They exist only if and to the extent:

- the buyer informs Primacon immediately about the infringement of rights or copyrights of third parties.
- the buyer supports Primacon in a reasonable extent at the defense of such claims or allows Primacon to carry out the rectification in accordance with Section VI.7.
- if all defensive measures, including out-of-court settlements, remain to Primacon,
- the defect is not due to an instruction of the buyer and
- the breach is not caused by the fact that the purchaser has the delivery arbitrarily modified or used in a non-conforming manner.

VII. Liability for breach of contractual secondary obligations, liability limits; Disclaimer

1. If the delivery item by fault of Primacon as a result of breach of secondary contractual obligations - in particular instructions for operation and maintenance of the delivered goods - can not be used by the Purchaser according to the contract, the provisions of Sections VI. and VII.2. apply accordingly under the exclusion of any other claims.

2. For other damages, especially those that have not occurred to the delivery item itself, Primacon is only liable

- with intent,
- gross negligence of the owner / corporate officer,
- culpable violation of life, body, health,
- defects, that Primacon has fraudulently concealed or whose absence Primacon has guaranteed,
- defects in the delivery item where there is liability under the Product Liability Act for personal injury or property damage to privately used objects,
- in case of culpable violation of essential contractual obligations Primacon is liable for gross negligence of employees and for slight negligence, in case of slight negligence the liability is limited to typical and foreseeable damage.

3. Further claims are excluded.

VIII. Limitation

For damages after the Section VII 2 - Indent 5, the statutory limitation periods apply, as well as for claims pursuant to § 438 Section 1 No. 2 BGB and § 634 paragraph 1 No. 2 BGB. All other claims of the Purchaser shall expire after one year.

IX. Applicable law, place of jurisdiction, validity

1. German law applies exclusively to all legal relationships between Primacon and the customer. The application of the UN Sales Convention is excluded.
2. Jurisdiction for any disputes arising from the business relationship between the customer and Primacon is Weilheim in Oberbayern, if the customer is a businessman. The statutory provision on exclusive jurisdiction remain unaffected by this provision.
3. These conditions apply to all business relationships from 01.08.2013 and until such time as they are replaced by a newer version.

X. Privacy Policy

Primacon stores and processes personal data necessary for business transactions with the customer. Primacon is entitled to edit and save the data in the context of a contract by a third party.

XI. Severability

1. If provisions of this contract should be invalid, ineffective or impractical, so should not be affected by the validity, effectiveness and satisfiability of the remaining parts of the contract.
2. The Parties undertake, in this case, the invalid, ineffective or unrealisable part of the contract by a valid, effective and achievable replace determination that the original intent of the parties comes closest in content.