

General Terms and Conditions of Business

General Terms and Conditions of Business

of performance international GmbH, Mühlsteige 13, 89075 Ulm

1. Scope of application

- a. Our deliveries, performances and tenders shall ensue exclusively on the basis of these Terms and Conditions of Business.
- b. Deviating Terms and Conditions of Business shall not be acknowledged.

2. Conclusion of contract

- a. Tenders included in brochures, advertisements, etc. shall be subject to change and non-binding, even as regards the quoted prices. We shall abide by specifically developed tenders for 30 calendar days.
- b. In order to be legally effective orders shall require our confirmation, which shall ensue either in writing, via e-mail or by delivery. The e-mail acknowledging the receipt of the order as confirmation of said order as it is automatically generated.
- c. All agreements differing from the tender, which are reached between the Customer and our company for the purpose of executing this contract, shall be laid down in writing.

3. The Purchaser's right to withdraw and the Supplier's miscellaneous liabilities

- a. The Purchaser may withdraw from the contract should the Supplier be unable to fulfil his obligations under this contract prior to transferring the risk. The Purchaser may also withdraw from the contract should, in the event of an order of homogeneous items, the execution of part of the delivery become impossible as regards the required number and the Purchaser has a valid justification for rejecting a partial delivery. Should this not be the case, the Purchaser may correspondingly reduce the return service. The same shall apply in the event of the Supplier's inability.
- b. Should a delay in accordance with Section 5 of these General Terms and Conditions of Business exist and should the Purchaser grant the defaulting Supplier a reasonable period of grace with the explicit declaration that he will reject the acceptance of performance once this period of time has elapsed, and should the period of grace not be kept, the Purchaser shall be entitled to withdraw.
- c. Should the impossibility or inability occur during the delay in acceptance, or should the Purchaser be responsible for these circumstances, whether solely or predominantly, the latter shall be obligated to render the return service.

4. Prices, changes in price

The prices are exclusive of the respectively applicable value added tax. We shall charge a shipping and handling cost of EUR 7.95 for every order within Germany.

5. Delivery period

- a. The delivery period shall be communicated with the confirmation of order. No liability may be assumed for the delivery period. Partial deliveries may be made. Should the delivery be delayed, we shall inform the Customer thereof. In the event of prepayment, the commodity shall not be shipped until payment has been received.
- b. The delivery period shall begin with the dispatch of the confirmation of order, but not before the documents, approvals and releases to be procured by the Purchaser have been provided and an agreed deposit has been received. The delivery period shall have been kept when either the delivery item has left the factory prior to its expiration or the readiness for shipment has been communicated.
- c. The delivery period shall be reasonably extended in the event of measures within the scope of industrial disputes, particularly strike and lockout, as well as in the event of the occurrence of unforeseeable obstacles, which are outside the Supplier's influence, inasmuch as such obstacles have an influence on the completion or delivery of the delivery item. This shall also apply when the circumstances occur on Subcontractors' premises. The previously mentioned circumstances shall not be the Supplier's responsibility, even if they occur during an already existing delay. In critical cases, the Supplier shall

- inform the Purchaser of the beginning and end of such obstacles as soon as possible.
- d. Should the Supplier be required to pay compensation, the claim to compensation to which the Purchaser is entitled – inasmuch as the contract relates to one of the Purchaser's commercial activities – shall be limited to the foreseeable damage at the time of concluding the contract, and in fact to ½% for every full week of the delay, but overall to a maximum of 5% of the value of that part of the total delivery, which cannot be used punctually or contractually as a result of the delay or non-delivery.
 - e. Should shipment ensue later than agreed at the Purchaser's request, the costs of storage shall be invoiced – beginning one month after the notification of readiness for shipment. In the event of storage in the Supplier's factory, however, a minimum of 0,5% of the invoice amount for each month commenced. However, after the setting and unproductive conclusion of a reasonable period of time, the Supplier shall be entitled, after notifying the Purchaser, to otherwise dispose of the delivery item and resupply the Purchaser within an appropriately extended period of time.
 - f. A prerequisite of compliance with the delivery period shall be the fulfilment of the Purchaser's contractual obligations.

6. Dispatch and transfer of risk

The risk shall transfer to the Customer as soon as the consignment has been transferred to the person performing the transport. This shall not apply, however, when the Customer is a consumer.

7. Warranty

- a. Should the delivery item be defective or should warranted characteristics be missing from it, or should it become defective within the warranty period due to production or material shortages, at the Customer's choice, we shall deliver a replacement or perform a repair, with all other warranty claims being excluded. We shall reserve the right to either perform the repair work ourselves or to commit the sold commodity to the manufacturer or importer for repair. A liability on our part with regard to any repair work incorrectly performed by the manufacturer or importer shall be excluded. Repeated repairs shall be admissible.
- b. The warranty period shall be 24 months for private end customers and 12 months for commercial customers. It shall begin on the date of delivery. This shall not affect any extended manufacturer's guarantee.
- c. Obvious defects shall be reported to us in writing no later than within two weeks of the delivery. During shipment the commodity shall be immediately inspected by the Customer and, in the event of complaints, both the commodity and the packaging shall be kept ready for the freight carrier to inspect. The defective delivery items shall be kept ready for our inspection in the same state in which they were on the date the defect was established or, in the event of shipment, shall be returned to us in the original packaging.
- d. Should the repair or replacement delivery fail after a reasonable period of time, the Customer may choose to request a reduction in the purchase price, rescission of the contract or damages.

8. Limitation of liability

Claims for compensation arising from the infringement of contractual obligations, which are not associated with the warranty right of consumers, as well as claims for compensation arising from tortious act, are excluded against both ourselves and our vicarious agents, unless the damage was caused intentionally or by gross negligence.

9. Retention of ownership

- a. Until such time as all claims, to which we are entitled against the Customer on every legal ground, either now or in the future, have been satisfied, we shall retain the ownership of the delivered (- goods conditional commodity).
- b. In the event of contractually infringing behaviour on the Customer's part - particularly in the event of default of payment - we shall be entitled to take back the conditional commodity. Our taking back or pledging of the conditional commodity should always be regarded as withdrawal from the contract pursuant to § 503 paragraph 2 of the BGB (German Civil Code).

9. Repairs and assemblies

Our terms and conditions of repair and assembly shall be considered as agreed for repairs and assemblies in the event of technical products.

10. Payment

- a. Our invoices shall fall due for immediate payment, without deduction, once the invoice has been issued; a cash discount shall be excluded.
- b. Deliveries shall ensue against prepayment or via credit card settlement only.
- c. In the event of electronic payment procedures (credit card, direct debit), the debit shall be made immediately after the commodity has been ordered.

11. Place of fulfilment, place of jurisdiction, applicable law

Place of fulfilment and place of jurisdiction for all claims arising from the Terms and Conditions of Business, particularly from the deliveries, is Ulm – even if sales or deliveries have been made by a subsidiary. This place of jurisdiction shall also apply to disputes concerning the materialisation and validity of the contractual relationship. The Supplier may also bring charges at the competent court for the Purchaser's domicile. The law of the Republic of Germany shall apply.

12. Data protection

We will use Customer data exclusively for the processing of orders or for rendering our other performances and services. All Customer data will be stored and processed by us, taking into account the relevant provisions of the Bundesdatenschutzgesetz (BDSG; German Data Protection Act) and the Teledienstschutzgesetz (TDDSG; Tele Services Data Protection Act). The Customer expressly consents to this data capture and our processing and use thereof when submitting the order. We guarantee that more extensive data will only be stored anonymously or with the Customer's explicit consent. Personal data will also be transferred encoded via SSL. Every Customer shall have the right to be notified of the scope, content and purpose of the data stored on it. It may at any time request the relevant data to be corrected, blocked or, if applicable, deleted.

13. Invalidity

Should any individual provisions of our Terms and Conditions of Business be void or otherwise invalid, this shall not affect the validity of the remaining terms and conditions.

Terms and conditions of repair

of performance international GmbH. Mühlsteige 13. 89075 Ulm

(I) Conclusion of contract, general

1. Should an undisputed written confirmation of order exist, this shall be definitive for the content of the contract and scope of the repair. Subsidiary agreements and contract amendments shall require the Contractor's written confirmation.
2. Should the Contractor not deliver the repair item, the Customer shall be required to refer to industrial property rights in respect of the item; should the Contractor bear no blame, the Customer shall indemnify the Contractor against possible third-party claims arising from industrial property rights.

(II) Infeasible repair

1. The performances rendered for the submission of a cost estimate as well as the further accrued and verifiable expense (troubleshooting time equals work time) shall be invoiced to the Customer, if the repair cannot be performed for reasons for which the Contractor is not responsible, particularly because
 - a) the rejected error did not occur in the inspection,
 - b) spare parts cannot be procured,
 - c) the Customer has culpably missed the agreed date,
 - d) the contract has been terminated during the implementation.
2. The repair item shall only need to be returned to its original state at the Customer's explicit request in return for cost reimbursement, unless the work performed was unnecessary.
3. In the event of infeasible repair, the Contractor shall not be liable for damages to the repair item, the infringement of secondary contractual obligations and for damages, which have not occurred to the repair item itself, irrespective of which legal ground the Customer invokes.
4. This disclaimer shall not apply in the event of intent, gross negligence on the part of the owner or executive staff member, or in the event of culpable infringement of essential contractual obligations.

5. In the event of culpable infringement of essential contractual obligations the Contractor shall only be liable – except in cases of intent and gross negligence on the part of the owner or executive staff member – for any contractually typical, reasonably foreseeable damage.

(III) Cost estimate

1. The expected repair price shall be quoted to the Customer at the time of concluding the contract. Should it prove impossible to perform the repair at such cost, or should the Contractor feel the performance of additional work to be necessary during the repair, the Customer's consent shall be obtained, should the quoted costs be exceeded by more than 15%.
2. Should a cost estimate with binding price quotes be desired before the repair is performed, the Customer shall explicitly request such in writing. Such a cost estimate shall only be binding when made in writing and designated as binding.

(IV) Price and payment

1. The Contractor shall be entitled to request a reasonable prepayment at the time of concluding the contract.
2. Payment shall be made without cash discount at the time of acceptance and surrender or transfer of the invoice.
3. Any correction to the invoice on the Contractor's part and any complaint on the Customer's part shall be made in writing, no later than four weeks after receipt of the invoice.
4. The retention of payments, or the offsetting thereof because of possible Customer counterclaims disputed by the Contractor, shall not be allowed.

(V) The Customer's collaboration and technical assistance in the event of repairs performed outside the Contractor's factory

1. The Customer shall support the repair personnel during the performance of the repair at its own expense and shall be obligated to provide technical assistance at its own expense. The Customer's technical assistance shall ensure that the repair begins immediately after the repair personnel arrive and can be performed without delay up until the acceptance by the Customer. Should specific plans or instructions of the Contractor be required, the latter shall provide the Customer with them in good time.
2. The Customer shall take the specific steps necessary to protect the persons and objects at the repair location. It shall also inform the repair manager of any existing special safety provisions, inasmuch as the latter are relevant to the repair personnel.
3. Should the Customer fail to meet its obligations, the Contractor shall be entitled, but not obligated, after setting a period of grace, to take the actions incumbent upon the Customer in the latter's place and at the latter's expense.

(VI) Transport and insurance in the event of repairs performed in the Contractor's factory

1. Unless otherwise agreed in writing, any delivery and collection of the repair item performed at the Customer's request – including any packaging and loading – shall be performed at the latter's expense, the repair item shall otherwise be delivered to the Contractor by the Customer at the latter's expense and, after the Contractor has performed the repair, collected again by the Customer.
2. The Customer shall bear the transport risk.
3. The Contractor shall insure the return transport against insurable transport risks at the Customer's expense.
4. During the repair period in the Contractor's factory no insurance cover exists. The Customer shall ensure that the existing insurance cover for the repair item is upheld, e.g. with regard to fire, tap water, storm and machine breakdown insurance.
5. In the event of delay in transfer on the Customer's part, the Contractor may charge a storage fee for storage in its factory. The repair item may also be stored otherwise at the Contractor's discretion. Costs and risk of storage shall be at the Customer's expense.

(VII) Repair period

1. The information on the repair periods is based on estimates and thus non-binding.
2. The agreement of a binding repair period, which needs to be designated in writing as binding, may only be requested by the Customer once the scope of the work has been precisely stipulated.
3. The binding repair period shall be considered as having been kept should the delivery item be ready to be transferred to the Customer once said period has expired.
4. In the event of additional and more extensive orders placed at a later date, or in the event of necessary additional repair work, the agreed repair period shall be extended accordingly.
5. Should the repair be delayed due to the occurrence of circumstances for which the Contractor is not responsible, a reasonable extension of the repair period shall occur; this shall also apply even if such circumstances occur after the Contractor has fallen behind schedule.
6. Should the Customer experience a verifiable loss in consequence of the Contractor's delay, it shall be entitled to request default compensation, with other claims being excluded; such compensation will amount to 0.5% for every full week of the delay, but overall to a maximum of 5% of the repair price for that part of the item to be repaired by the Contractor, which cannot be used punctually as a consequence of the delay. Should the Customer grant the defaulting Contractor a reasonable period of time to perform – taking into account the statutory exceptions – and should the deadline not be kept, the Customer shall be entitled to withdraw within the scope of the statutory provisions. No other claims exist – irrespective of XI.3.

(VIII) Acceptance

1. The Customer shall be obligated to accept the repair work as soon as it is notified of the completion thereof. Should the repair prove to be non-contractual, the Contractor shall be obligated to rectify the defect. This shall not apply should the defect be insignificant for the Customer's interests or be based on a circumstance for which the Customer is responsible. Should a non-essential defect exist, the Customer may not refuse acceptance.
2. Should the acceptance be delayed through no fault of the Contractor, the acceptance shall be considered to have ensued once two weeks since the notification of the completion of the repair have expired.
3. On acceptance, the Contractor's liability for recognisable defects shall cease to apply, unless the Customer has reserved the right to assert a claim reference a specific defect.

(IX) Retention of title, extended right of lien

1. The Contractor shall retain the ownership of all used accessories, spare parts and exchange parts until all claims have been received.
2. Due to its claim arising from the repair contract, the Contractor shall be entitled to a right of lien to the Customer's repair item in its possession owing to the contract. The right of lien may also be asserted due to claims from earlier work, spare part deliveries and other performances, inasmuch as the latter are associated with the repair item.
3. The right of lien shall only apply to other claims arising from the business connection inasmuch as it is uncontested or legally effective.

(X) Warranty claims

1. After accepting the repair, the Contractor shall be liable for defects in the repair, which occur within 12 months of acceptance (within 6 months in the event of multi-shift operation), with all other claims on the Customer's part being excluded, irrespective of no. 5 and XI, in such a way that it shall be responsible for rectifying the defect. The Customer shall immediately notify the Contractor in writing of any established defect.
2. The Contractor shall not be liable should the defect be insignificant for the Customer's interests or be based on a circumstance for which the Customer is responsible.
3. This shall particularly apply with regard to parts provided by the Customer.
4. In the event of any improper changes or repair work performed on the part of the Customer or third parties without the Contractor's prior consent, the Contractor's liability shall be cancelled for the resulting consequences. Only in emergencies involving a risk to operational safety and to avert

disproportionately high losses, in which case the Contractor shall be immediately informed, or should the Contractor have allowed a reasonable period of grace set for it to rectify the defect to elapse unproductively, shall the Customer have the right to rectify the defect itself or have it rectified by third parties and to request reimbursement of the necessary costs by the Contractor.

5. Of the direct costs occurring due to the rectification of defect the Contractor shall – inasmuch as the complaint proves to be justified – bear the costs of the spare part including the shipment as well as the reasonable costs of the insertion and removal and, if this can be justly requested according to the situation of the individual case, the costs of any required production of its assembly fitters and auxiliary helpers.
6. Should the Contractor – taking into account the statutory cases of exception – allow a set period of time for it to rectify the defect to elapse unproductively, the Customer shall have a right to reduction within the scope of the statutory provisions.
7. The Customer's right to reduction shall also exist in other cases of failed rectification of defect. Only if the repair is verifiably of no interest to the Customer, despite the reduction, may the Customer withdraw from the contract.
8. In the event of a warranty request being rejected, the Contractor shall keep replaced parts at the Customer's disposal for two weeks after the notification of rejection. Once this period of time has expired, the parts shall become the Contractor's property.

(XI) Contractor's liability, disclaimer

1. Should parts of the repair item be damaged through the Contractor's fault, at its own choice the latter shall repair such parts or redeliver them at its own expense. The obligation to replace shall be limited to the amount of the contractual repair price. For the rest, XI. 3. shall apply accordingly.
2. If, through the Contractor's fault, the repair item cannot be used contractually by the Customer as a result of omitted or erroneous execution of proposals and consultations ensuing before or after the conclusion of the contract as well as of other secondary contractual obligations – particularly instructions for operation and maintenance of the repair item, the regulations of sections X. and XI. I. and 3. shall apply, with other claims on the Customer's part being excluded.
3. Above and beyond the claims to which it is entitled in these provisions, the Customer may not assert any claims to indemnification against the Contractor, particularly any claims to compensation, not even arising from non-contractual action, or other rights due to any disadvantage associated with the repair, irrespective of which legal ground it invokes. The Contractor shall however be liable
 - a. in the event of intention.
 - b. in the event of gross negligence on the part of the owner / executive organs or executive staff member,
 - c. in the event of culpable injury to life, limb or health,
 - d. in the event of defects, which it has deliberately concealed or the absence of which it has guaranteed,
 - e. inasmuch as liability for privately used items is assumed according to the Produkthaftungsgesetz (Product Liability Act) for injury to persons or damage to objects. In the event of culpable infringement of essential contractual obligations, the Contractor shall also be liable in the event of gross negligence of non-executive staff members and in the event of slight negligence, limited in the latter case to the contractually typical, reasonably foreseeable damages.

(XII) Replacement performance by the Customer

Should the devices or tools provided by the Contractor be damaged at the repair location during repair work outside the Contractor's factory, through no fault of the latter, or should they be lost through no fault of the latter, the Customer shall be obligated to reimburse such loss.

Damages, which are attributable to normal wear and tear, shall not be considered.

(XIV) Data storage

Pursuant to the Bundesdatenschutzgesetz, we hereby refer you to the fact that the Customer data received in connection with the business relationship will be processed and stored by us for our own purposes.

(XV) Place of fulfilment and place of jurisdiction

Place of fulfilment and place of jurisdiction for all claims arising from the business relationship shall be Ulm, even if repairs or deliveries have been performed by a subsidiary. This place of jurisdiction shall also apply to disputes concerning the materialisation and validity of the contractual relationship. The Contractor may also bring charges at the competent court for the Customer's domicile. The law of the Republic of Germany shall

apply exclusively.

Important information and conditions

Right of (cancellation valid only for consumers in accordance with § 13 of the BGB)

Right of cancellation

Consumers in accordance with § 13 of the BGB are natural entities with whom business relationships are entered into, without a commercial or self-employed profession being able to be attributed to them. Consumers may cancel their contractual statements within two weeks, without furnishing reasons, in text form (e.g. letter, fax, e-mail) or by return shipment of the commodity to pervormance international GmbH, Mühlsteige 13, 89075 Ulm. The period of time shall begin at the earliest on receipt of this instruction. The prompt dispatch of the cancellation or commodity shall suffice to observe the period of cancellation. The cancellation shall be directed to pervormance international GmbH, Mühlsteige 13, 89075 Ulm, e-Mail info@cooline.info, fax +49 731 1407114

1. Exempted from the rights of cancellation and return shall be:

- a. auctions (§ 312d, paragraph 5 of the BGB)
- b. sales without distance selling, i.e. in which the goods are purchased onsite (no shipment)
- c. deliveries of goods, which are manufactured according to Customer specification, or are obviously tailored to meet individual needs, or are not suitable for a return shipment due to their condition, or on which the expiration date has expired.

Consequences of cancellation

In the event of an effective cancellation, the mutually received performances shall be returned and, if applicable, benefits of use reimbursed.

Should you be unable to return us the received performances, either in whole or in part, or only in a deteriorated state, you shall be required to compensate us for lost value in that respect, if applicable. In the event of surrender of goods, this shall not apply should the deterioration of the item be attributable solely to the inspection thereof – as it would have been possible for you in the retail store.

Moreover, you can avoid the obligation to compensate for lost value by not using the item as if it were your own and by refraining from doing anything, which could be detrimental to the value thereof. Goods that can be sent by parcel delivery shall be return shipped. You shall bear the costs of the return shipment. You shall be required to fulfil obligations to refund payments within 30 days of dispatching your declaration of cancellation.

Your right to cancellation shall expire prematurely should your contract partner have begun to perform the service with your explicit consent prior to the end of the period of cancellation or should you have instigated such action yourself (e.g. via download, etc.)

2. To everything else, the General Terms and Conditions of Business of pervormance international GmbH shall apply.