

# **General Terms and Conditions PJ Motion GmbH**

**Version: April 2024**

## **1 General Provisions**

- 1.1 PJ Motion GmbH (hereinafter referred to as "PJM") shall conclude contracts exclusively on the basis of these General Terms and Conditions. These Terms and Conditions shall always apply in their latest version at the time the contract was concluded.
- 1.2 Provisions that diverge from or contradict or complement these Terms and Conditions shall not be part of any contract, unless agreed expressly in writing and by PJM.
- 1.3 All agreements shall require the written form.

## **2 Quotes and Order Confirmation**

- 2.1 All quotes provided by PJM are subject to change and non-binding.
- 2.2 PJM reserves the right to refuse an order without stating any reason.
- 2.3 All orders placed by the buyer shall be made in writing and signed by an authorised signatory.
- 2.4 Orders shall only be considered accepted by and contracts binding for PJM once a written order confirmation has been dispatched specifying the technical details.
- 2.5 Any subsequent contract changes require the written form.
- 2.6 Information provided in catalogues, brochures, price lists, displays at trade fair stalls, circulars, promotional material etc. as well as verbal information shall only be considered relevant if expressly declared to be part of the contractual content in the written order confirmation issued by PJM.
- 2.7 PJM shall duly fulfil the order placed on the basis of the generally recognised Code of Practice at the time of the conclusion of the contract and the principles of economic efficiency and sound financial management.

## **3 Prices**

- 3.1 All prices are given in Euros, without sales tax and Ex Works (delivery warehouse) in accordance with the Incoterms 2020.
- 3.2 In case additional or increased expenses occur due to a change in legal provisions between the conclusion of the contract and the delivery of the service, in particular with regard to customs or fluctuations of official exchange rates, PJM reserves the right to increase the agreed price accordingly.
- 3.3 Prices can increase in cases where the buyer violates his duties of cooperation, provided that this fact leads to additional costs. These additional costs are invoiced on a time and material basis plus a processing fee of 20%.
- 3.4 Any additional expenses arising from this contract and bank charges shall be paid by the buyer.
- 3.5 If PJM, upon the buyer's request, performs on-site services on the buyer's behalf, such services shall be invoiced separately.
- 3.6 In case the PJM scope of supply includes the organisation, supervision and accompaniment of measurement runs, the buyer shall bear all costs for track and traction, shunting, maintenance and repair and is responsible for the measurement object's transfers and all transfer-related costs.
- 3.7 In case the PJM scope of supply includes the organisation, supervision and accompaniment of measurement runs, bad weather days will be treated like downtime days through no fault of one's own. These are days that are charged if, due to certain weather conditions, no test runs can be performed and the measuring team must be present.

- 3.8 Basically, any additional services that are not included in the offer (e.g. expert assessments, analysis, evaluation, documentation, reporting services, etc.) are charged at an hourly rate of € 145,- net. Any additional 3<sup>rd</sup> party service that are not included in the offer (e.g. experts, test institutes, notified bodies, homologation entities, etc.) are charged at cost of the external partner plus a processing fee of 20%.
- 3.9 Travel times are charged at an hourly rate of € 115,- net.
- 3.10 Travel costs are charged according to the actual expenditure plus a manipulation surcharge of 10% as follows:
- Railway: 1<sup>st</sup> class
  - Aeroplane: flight time up to 4 hours economy class (e.g. within Europe), more than 4 hours business class (e.g. outside Europe)
  - Car: mileage allowance € 1,00/km
- 3.11 Beyond the normal working hours, the following surcharge rates shall apply: overtime and Saturday work + 50%, night (between 22:00 and 06:00)/Sunday/holiday work + 100%. According to the law, one working day comprises max. 12 hours and a working week max. 60 hours.
- 3.12 The PJM service prices in 3.8 and 3.9 are subject to indexation in accordance to the annual adaption in the tariff contract for Information and Consulting applicable for employees in skill level V1. The adaptation is automatically taken into account by PJM in the settlement and does not require prior coordination with the buyer.

#### **4 Scope of Services**

- 4.1 In all cases, the concluded contract shall constitute the basis for the scope of services to be rendered. Any change requests after the conclusion of the contract require a supplementary agreement with regard to delivery dates and pricing. Unforeseen additional efforts can lead to delivery date and price changes.
- 4.2 Objectively justified, minor changes to the services rendered by PJM that may reasonably be imposed on the buyer shall be understood as approved of in advance as long as form, fit and function are not affected.
- 4.3 Objectively justified partial deliveries and services shall be admissible and may be invoiced separately.
- 4.4 Unless otherwise agreed the project language shall be English. Reports are written in English.
- 4.5 Communication between the buyer and PJM is primarily executed via phone and virtual meetings. Regular project meetings on-site at the buyer location and/or PJM are to be defined at project start and invoiced according to clause 3.8 to 3.12.

#### **5 Delivery Times and Dates**

- 5.1 The delivery and/or service times and dates specified in the contract shall apply. Any change requests after the conclusion of the contract require a supplementary agreement with regard to delivery dates and pricing. Unforeseen additional efforts can lead to delivery date and price changes.
- 5.2 Compliance with delivery times on the part of PJM shall require the timely receipt of all input data and documents to be supplied by the buyer as well as the buyer's fulfilment of the agreed payment obligations, any legal and technical prerequisites to be provided by the buyer and any other obligations that are required in order for PJM to render its services. If the buyer delays the fulfilment of such prerequisites, delivery times will lengthen accordingly.
- 5.3 In cases where the agreed time schedule changes after the conclusion of the contract due to circumstances that are not attributable to PJM, any additional costs resulting therefrom are invoiced on a time and material basis plus a processing fee of 20 %. Among other things, this includes hotel cancellation fees, downtime days, futile business trips and rental charges.

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<sup>1</sup> <https://www.wko.at/service/kollektivvertrag/kollektivvertrag-information-und-consulting-2023.html>

- 5.4 In case delivery dates cannot be met or obligations cannot be executed on time due to force majeure, concerned deadlines will be extended for a period of time equal to the working days lost because of the occurrence of the event of force majeure. New legal COVID 19 regulations or travel restrictions as well as a certain extent of illness cases that affect the Parties' fulfilment of contractual duties are considered as force majeure if they come into effect or happen after the conclusion of the contract.
- 5.5 PJM cannot grant a short-time availability for optional offer positions.
- 5.6 In cases of force majeure, strike, unpredictable events or delays on the part of our suppliers that are not the fault of PJM or in case of other comparable events beyond the sphere of influence of PJM, delivery times and dates shall be deferred accordingly.

## **6 Payment Conditions**

- 6.1 All payments shall be made to the PJM bank account, IBAN: AT02 3632 2000 0018 7278 / BIC: RZTIAT2322.
- 6.2 Payments shall be made net within 30 days from the date of the invoice. After this period, the buyer shall be considered in default without an additional reminder being required.
- 6.3 PJM shall have the right to issue exclusively electronic invoices.
- 6.4 Specific projects and customised orders are generally invoiced monthly. Transport and travel costs are invoiced monthly.
- 6.5 In case of default of payment, also of a single instalment, any discounts granted (markdowns, reductions etc.) shall become null and void and shall be added to the invoice.
- 6.6 PJM reserves the right to charge default interest in accordance with the applicable legal provisions even in case of default of payment through no fault of the buyer's.
- 6.7 In cases of default of payment the buyer shall reimburse PJM for any expenses incurred in connection with reminders and collection of monies in cases where a debt-collection agency was consulted, in as far as such expenses were incurred to ensure adequate claims preparation.
- 6.8 Where PJM handles the debt collection process, the buyer shall be liable for a fee of EUR 5 per reminder.
- 6.9 If the buyer defaults on a payment within the framework of other contractual relations that exist with PJM, PJM reserves the right to put on hold the fulfilment of obligations from the latest contract until all other outstanding obligations on the part of the buyer have been met.
- 6.10 The buyer shall not have any right to retain or set off payments on the basis of counterclaims that have not been recognised by PJM or by a legally binding court order.

## **7 Buyer's Duty to Cooperate**

- 7.1 The buyer shall be liable for ensuring that all contractual, technical and legal prerequisites that are required for the provision of services are complied with and the provision date is understood as the project effective start date.
- 7.2 The buyer shall, at his expense, ensure the swift provision of third-party authorisations, notifications of authorities and licenses to be granted through the latter.
- 7.3 The buyer shall be liable for ensuring the correctness of all technical documentation provided and/or needed by PJM to conduct the services, i.e. legal documents, technical documents, operational documents, homologation documents, reports, etc.
- 7.4 If the completion of services is delayed or rendered impossible through circumstances for which the buyer is responsible, or if the buyer refuses acceptance, its obligation to pay the purchase price shall remain unaffected.

- 7.5 The buyer shall inform PJM without delay of any changes in his contact data, such as name, address and email address, either in writing or by e-mail. Furthermore, the buyer shall be responsible for ensuring that the receipt of e-mail messages is not hampered by forwarding, closing down or congestion. If the buyer violates these obligations through his own negligence, PJM reserves the right to cancel the contract and to invoice the buyer for any damages suffered.

## **8 Project Execution**

- 8.1 The project will be organized / managed according to PJM internal project management process. The project management process manages / describes all needed activities from an offer until the end of a project.
- 8.2 PJM usually creates a Project Management Plan including the most important project data as well as the detailed task. This Project Management Plan must be inspected and released by the buyer before the start of project execution. In case no feedback is provided by the buyer until then, the Project Management Plan is automatically considered as inspected and released.
- 8.3 For the prevention of delays, the buyer appoints a contact person who is always available and competent to make a decision.
- 8.4 The buyer shall provide the necessary infrastructure for any PJM services.
- 8.5 The buyer take the overall project and technical responsibility for its own product(s). This includes also the continuous or temporal availability of its product(s) for any kind of needed measuring task(s) as well as for the maintenance of its operational condition.
- 8.6 The buyer is responsible for the necessary reliability, availability, maintainability and safety measures.
- 8.7 PJM is not responsible for rail crime or vandalism during the service provision. In areas with an (increased) safety risk for staff or equipment (burglary), the buyer must provide a security service.
- 8.8 The PJM services must not be hindered by any other works.
- 8.9 For documents, PJM standard programmes (MS Office, ...) will be used.
- 8.10 If not agreed specifically, document output will be handed over in PDF / non changeable format.
- 8.11 During the performance of tests no evaluations will be carried out. Possibly communicated values are exclusively considered as informative interim values without guarantee.
- 8.12 The conduction of services in Switzerland after the exceedance of the 90 days-limit depends on the award of the work permit in Switzerland.
- 8.13 The buyer and PJM will mutually agree on a change management process throughout the project.
- 8.14 Should the buyer not accept the service or notify PJM of a defect within 10 business days after delivery, the service will be deemed to have been accepted by mutual agreement and the buyer will pay the open expenses of PJM.
- 8.15 If not agreed specifically within the contract between the buyer and PJM, the buyer is responsible for ordering and mandating Authorisation bodies (i.e. Notified Bodies, Designated Bodies, Assessment Bodies, Independent Safety Assessors, ECM Certification Bodies and any other Inspection Bodies needed. Same applies for Test Laboratories (i.e. IEC 17025 laboratories) as well as infrastructure track reservations and other services needed for test drives. It is the buyers responsibility to secure the availability and payment of these third parties.

## **9 Reservation of Title**

- 9.1 Goods supplied or installed by PJM or goods that were handed over to the buyer in any other way shall remain the sole property of PJM until payment has been made in full.
- 9.2 Until PJM claims have been settled in full, the delivery item/service shall not be mortgaged, transferred as security or encumbered with third-party rights in any other way.
- 9.3 A resale shall only be admissible if PJM is notified of the purchaser's name and address and if PJM expressly agrees to the resale.
- 9.4 If the buyer defaults on its payment obligations, PJM reserves the right to reclaim the reserved goods. In such a case, the buyer shall be obligated to release them. The buyer agrees that PJM shall have the right to enter the location of the reserved goods in order to assert this reservation of title. Such a reclaim shall not be considered a withdrawal from the contract.
- 9.5 Up until the transfer of title to the buyer, PJM reserves the right to refuse the delivery of its products if the buyer becomes bankrupt or if insolvency proceedings are instigated against it or rejected for lack of sufficient assets.
- 9.6 Until its payment obligations have been met in full, the buyer shall keep the product in a workable, functioning condition.

## **10 Warranty**

- 10.1 The warranty period is one year from the date of the handover to the buyer. If acceptance procedures are agreed, the warranty period begins upon acceptance. In the case of replacement deliveries or error correction, the warranty period for the parts affected by the defect begins to run anew for another 12 months, which extends the total warranty period to a maximum of 24 months.
- 10.2 Warranty claims may only be asserted subsequent to a notice of defects, which must be delivered exclusively by registered post and contain a detailed description of faults and indication of possible reasons. Such notice of defects must be given within 10 working days from the rendering of the service or partial service.
- 10.3 Defects that cannot be detected within this period even through meticulous inspection shall be rephended immediately after their detection and within the warranty period.
- 10.4 With the exception of cases where legal provisions imply the right to revocation or price reduction, PJM shall reserve the right to settle warranty claims through repair or exchange at its own discretion.
- 10.5 Depending on the circumstances, PJM shall fulfil claims to repair and/or exchange within a reasonable period of time. Claims for damage due to delayed performance cannot be made during this period.
- 10.6 The buyer shall not have the right to refuse acceptance on the basis of an immaterial defect.
- 10.7 Circumstances in which the product is not fully suitable for the agreed use shall not constitute a defect, if such unsuitability arises exclusively from information made available to PJM at the time of the rendering of the service diverging from actual conditions, and if such divergence arises from a failure on the part of the buyer to fulfil its duty to cooperate.
- 10.8 Circumstances in which the buyer's technical facilities such as supply lines, cables, networks etc. are not technically flawless and fully functional or not compatible with the delivered product shall not constitute a defect.
- 10.9 PJM assumes no warranty for third party services that are organised by PJM by order of the buyer.
- 10.10 In cases where the buyer's claims of defects turn out to be unjustified, the buyer shall be obligated to reimburse PJM for any expenses arising from the determination of absence of defects or repairs.
- 10.11 Should the buyer not accept the service or notify PJM of a defect within 10 business days after delivery, the service will be deemed to have been accepted by mutual agreement and the buyer will pay the open expenses of PJM.

## 11 Compensation for Damages

- 11.1 To the extent permitted by law, PJM shall be liable only for damages arising from the violation of contractual obligations and in the object of performance itself, and only if the buyer can prove either premeditation or gross negligence. Liability for slight negligence and compensation for consequential damages (e.g. downtime, additional expenses for services and charges arising therefrom, purely economic losses, loss of savings and profits, loss of interest and damages arising from third-party claims towards a contractual partner) shall be excluded. The liability of defects caused by PJM, arising out of or in connection with this project, regardless of the legal reason, shall be limited, in all cases, to 100% of the contractual value.
- 11.2 This liability of PJM shall in any event be upwards limited to the sum covered by the liability insurance in the amount of EUR 1,000,000.00.
- 11.3 The buyer shall pass on this limitation of liability to its customers and instruct them to pass it on to the final user.
- 11.4 In case of incorrect or negligent use or operation of the product or the software on the part of the buyer, all liability for damages on the part of PJM shall be excluded.
- 11.5 PJM assumes no liability for third party services that are organised by PJM by order of the buyer.

## 12 Withdrawal from Contract, Failure to Meet an Obligation, Non-Performance

- 12.1 The following events shall lead to the immediate termination of the contract:
- The buyer uses the product for fraudulent, illegal or other improper purpose,
  - criminal proceedings are initiated against the buyer,
  - the buyer is still in default of payment after receipt of several reminders,
  - the buyer's business has been terminated or liquidated,
  - or insolvency or composition proceedings are instigated against it or rejected for lack of sufficient assets.
- 12.2 If PJM is in default as to the performance of an obligation, the buyer shall only have the right to withdraw from the contract after an appropriate grace period has been set and elapsed fruitlessly. The grace period shall be set in writing and dispatched by registered mail.
- 12.3 The buyer and PJM agree that the dates mentioned in the Project Milestone Plan are the target to be achieved in the execution of the project and that delays in the achievement of the obligations contained therein would lead to contractual penalties. These dates can be amended by mutual consent, and the buyer grants PJM a grace period of 6 months. The liability for delay or a contractual penalty to be derived therefrom shall amount to 1% of the contract value of the respective work package according to the PJM order confirmation for each commenced calendar month of delay, but limited, in all cases, to the maximum coverage of the PJM liability insurance.
- 12.4 In cases where a supplier to PJM defaults on proper and timely delivery, for any reason outside the sphere of influence of PJM, for which PJM shall produce evidence, PJM reserves the right to withdraw from the contract.
- 12.5 In cases where the buyer defaults on a partial payment or a duty to cooperate in a way that makes the completion of the order on the part of PJM impossible or hinders it significantly, PJM shall have the right to withdraw from the contract. In such a case, and in cases where the buyer withdraws from the contract for unwarranted reasons, the right of PJM to the agreed fee in its total shall remain unaffected. In cases where PJM withdraws from the contract for warranted reasons, PJM shall be paid for any services already rendered.

12.6 If the buyer cancels the project during the lead-time, or if no legal, technical and commercially feasible solution emerges in the course of the project execution, the buyer undertakes to pay all costs incurred by the end of the month in which the project was terminated under consideration of the payment terms in clause 4.3. PJM must be informed in writing about the cancelation of the project. If the project is to be continued at a later date, both contracting parties will determine the costs and schedule of a continuation in close consultation. The received down payment remains at PJM and will not be reimbursed. Should the buyer elect to terminate the project during its lead-time, or should it become manifest that no solution is achievable that satisfies legal, technical, and commercial feasibility requirements, the buyer is obligated to compensate PJM for all costs and expenditures incurred up to the termination date. Such compensation shall be settled no later than the end of the month in which the project was discontinued, all in accordance with the payment provisions set forth in Clause 4.3 of this Agreement. Any notice of termination by the buyer must be delivered to PJM in written form. Should there be mutual intent to recommence the project at a subsequent date, both Parties shall engage in good faith discussions to ascertain the associated costs and to establish a revised timeline for project completion. Any advance payments previously furnished by the buyer to PJM shall be retained by PJM and shall not be subject to refund or reimbursement

### **13 Confidentiality**

- 13.1 The contractual parties shall keep confidential all mutually provided information, documents and project data, which are therefore considered as confidential information. All measures shall be taken that are required to ensure that third parties cannot access or use this information. This duty of confidentiality also refers to employees, vicarious agents and contractual partners.
- 13.2 Confidential information may only be disclosed in the case of an existing corresponding agreement between the buyer and PJM, on the basis of legal or regulatory requirements or procedures or in cases where a publication of the concerned information has been carried out by the buyer itself. In all cases, the buyer must be immediately and fully informed about the disclosure.
- 13.3 In cases where PJM is given access to the buyer's confidential information from other sources of information that are different from the buyer, this information as well as the concerned source of information must also be kept confidential without the source of information's consent.

### **14 Data Protection and Intellectual Property Rights**

- 14.1 The buyer expressly agrees with the collection, processing and use of personal data for the purpose of completing the order. The shared data shall only be used within the framework of the business relationship that is required for completing the order and shall be protected from third-party access. Data shall be saved only to the extent that this is deemed necessary for the contractual relationship or due to other legal provisions.
- 14.2 The buyer agrees with its data being passed on to the officially privileged creditor protection associations AKV EUROPA - Alpenländischer Kreditorenverband für Kreditschutz und Betriebswirtschaft, Creditreform Wirtschaftsauskunftei Kubicki KG and Kreditschutzverband von 1870.
- 14.3 PJM reserves all rights to documents drawn up by PJM (in particular plans, brochures, technical documents) and their use.
- 14.4 The use of such documents or parts thereof shall require the express consent of PJM. All documents may thus be used only for the purposes expressly specified in the order placement or in a subsequent agreement.
- 14.5 PJM shall have the right and the buyer shall be obligated to indicate the PJM name (company, trade name) in publications or announcements of the project.



## **15 Legal Recourse and Waiver**

- 15.1 The non-assertion of claims on the part of PJM in cases of violation of the contractual provisions by the buyer shall not give rise to a waiving of legal remedies with regard to earlier or later violations of this or any other contractual provision or to a contract amendment.
- 15.2 All rights and legal remedies shall be considered cumulative and non-exclusive and may be used individually or in parallel.

## **16 Legal Succession**

- 16.1 If a new business venture is founded in order to perform transactions, all rights and duties of PJM shall be transferred to the new business. The reestablishment of the contractual relationship shall not be required. Advance notification of such legal succession shall be given in good time.

## **17 Place of Performance, Court of Jurisdiction, Applicable Law**

- 17.1 Unless agreed otherwise in writing, the place of performance shall be the place of business of PJM in 6134 Vomp.
- 17.2 Contracts concluded between PJM and its buyers shall be exclusively subject to Austrian law. The UN Convention on Contracts for the International Sale of Goods as well as the conflict of laws rules shall be excluded. The contractual languages shall be German or English.
- 17.3 All disputes arising from this contract between PJM and buyers from EU-countries, Island, Liechtenstein, Norway and Switzerland shall be settled by the competent court at the place of business of PJM. PJM reserves the right to also file suits at the buyer's court of general jurisdiction.
- 17.4 All disputes arising from this contract between PJM and buyers from all other countries that are not mentioned under point 17.3 above shall be finally settled under the Rules of Arbitration of the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna (Vienna Rules) by one or three arbitrators appointed in accordance with the said Rules.

## **18 Severability Clause**

- 18.1 If individual provision of these Terms and Condition should be or become invalid, the validity of the remaining provisions shall remain unaffected. Invalid or missing provisions shall be replaced by legally valid provisions that come closest to the economic purpose originally envisaged by the contractual parties.