



## Precitec GmbH & Co. KG

# General Conditions for Supply and Delivery

These General Conditions as well as potential separate contractual agreements shall apply to all supplies and deliveries from Precitec GmbH & Co. KG to customers located outside Germany. Customer's different conditions of purchase will not become terms of contract, even by order acceptance.

The General Conditions for Supply and Delivery of mechanical, electrical and electronic products Orgalime S 2012 as well as the appendix attached to the Orgalime General Conditions S 2012, which will be provided on request, do apply, unless there are deviating provisions in these conditions.

### PREAMBLE

Regarding clause 1 (amendment):

Hereinafter the Precitec GmbH & Co. KG will be referred to as the Supplier, the customer as the Purchaser and both contractual partners as parties.

The Supplier is entitled to withdraw from the contract or retract the quote if

a) required export control approvals or other approvals under public law required to perform the contract are not granted, are revoked or retracted;

or

b) new export control regulations are introduced after the quote is issued that make it illegal to perform the contract.

### ACCEPTANCE TESTS

Regarding clause 7:  
is deleted without replacement

Regarding clause 9:  
is deleted without replacement

### TIME FOR DELIVERY, DELAY

Regarding clause 11 (amendment):  
Compliance with the delivery deadline is subject to the correct and punctual supply to the Supplier himself.

Regarding clause 12 (amendment):  
Total compensation in this case shall not exceed 7.5% of the purchase price.

Regarding clause 14 first sentence (amendment – in italics):  
If the Product is not delivered on or before the delivery deadline, (...), and the Purchaser suffers damages as a result, the Purchaser is entitled to (...).

### PAYMENT

Regarding clause 19 (to be replaced by the following):  
Unless otherwise agreed, the purchase price shall be paid within 30 days due net from the receipt of the invoice as well as the goods respectively the provision of service.

Regarding clause 21 second sentence (to be replaced by the following):

The rate of interest shall be as agreed between the parties or otherwise 9 percentage points above the rate of the main refinancing facility of the European Central Bank.

### LIABILITY FOR DEFECTS

Regarding clause 23 (amendment):

...or an infringement of industrial property rights or copyrights in one of the following countries: member states of the European Union, Switzerland, Turkey, People's Republic of China, Taiwan, Republic of Korea, Japan, USA, Canada, Mexico, Brazil.

Regarding clause 30 (amendment):

If an infringement of industrial property rights or copyrights (for which the Supplier is liable) occurs, the Supplier will attempt to provide the Purchaser, at his own expense, with the right for further use or to modify the product in such a way (which is reasonable for the customer), so that an infringement of industrial property rights or copyrights no longer exists.

Regarding clauses 36 and 37 (to be replaced by the following):

If the Supplier does not fulfil his obligations under Clause 30 within a reasonable time the Purchaser may give the supplier a final and reasonable deadline for delivery on or before which the Supplier must fulfil his obligations.

If the Supplier fails to fulfil his obligations before or on the deadline,

a) the Purchaser is entitled to a reduction of the purchase price in proportion to the reduced value of the Product, whereby the reduction shall not exceed 15 per cent of the purchase price, or,

b) where the defect is so substantial that the Purchaser loses all further interest in the contract, the Purchaser may terminate the contract by notice in writing to the Supplier.

The Purchaser is then entitled to compensation for the loss he has sustained, up to a maximum of 15 per cent of the purchase price.

Only in urgent cases where industrial safety is endangered and to prevent disproportionately large damages, (whereby the Supplier must be informed immediately), the Purchaser may himself (or employ a third party to) carry out any necessary remedial works and claim reimbursement of the expenditure incurred.

Where successful remedial works have been undertaken by the Purchaser or a third party, reimbursement (by the Supplier) of reasonable costs incurred by the Purchaser shall be in full settlement of the Supplier's liabilities for the said defect.

Should the elimination of an infringement of industrial property rights or copyrights (for which the Supplier is liable) not be possible under economically adequate conditions or within a reasonable period of time, both the Purchaser and the Supplier are entitled to terminate the contract by notice in writing. The Supplier shall exempt the Purchaser from any undisputed or legally binding claims of the owner of the property rights against the Purchaser; the Purchaser shall forfeit this right of recourse if he does not inform the Supplier immediately after the assertion of claims (of whatever kind) against him and grant the Supplier the right and the possibility to take legal action against such claims, whereby the Purchaser shall undertake to assist the Supplier according to the Supplier's demands.

Regarding clause 24 (amendment):

The Supplier is not liable for any infringement of industrial property rights or copyrights of third persons if the infringement



is based on a requirement of the Purchaser or if the infringement occurs only as a result of concrete use of the delivery item by the Purchaser, or at the Purchaser's premises.

Regarding clause 26 (amendment – in italics):

The Supplier shall not be liable for defects caused by circumstances, which arise after the risk has passed to the Purchaser, e.g. defects due to faulty maintenance, incorrect installation or faulty repair, *the use of other than original Precitec spare parts* by the Purchaser or to alterations carried out without the Supplier's consent in writing. The Supplier shall neither be liable for normal wear and tear nor for deterioration.

Regarding clause 39 (to be replaced by the following):

1. The Supplier's liability for damages irrespective of its legal basis shall be limited in case of intent or negligence as provided for in this Clause 39.

2. The Supplier shall not be liable in case of simple negligence (einfache Fahrlässigkeit) of its directors, legal representatives, employees or other vicarious agents (Erfüllungsgehilfe) if no essential contractual obligations have been breached.

3. If and to the extent the Supplier's liability pursuant to paragraph 2 exists, this liability shall be limited to damages which the Supplier has foreseen as possible consequence of its contractual breach at the date of execution of this agreement or which the Supplier has known or should have known in consideration of the circumstances and applying reasonable (verkehrsüblich) diligence. Indirect and consequential damages resulting from defects of the products delivered by the Supplier shall only be compensated if and to the extent such damages are typically to be expected in case of the designated use of the Supplier's products.

4. The exclusion and limitation of liability provided for in the preceding paragraphs shall also apply to the liability of directors, legal representatives, employees and other vicarious agents.

5. The restrictions provided for in this Clause 39 shall not apply to the Supplier's liability based on intentional behavior, guaranteed characteristics, harm of life, body or health or based on the act on product liability ("Produkthaftungsgesetz" – "ProdHaftG") or in case of grossly negligent behavior of the Supplier or its directors, legal representatives, employees or vicarious agents.

6. The term essential contractual obligations as used in this Clause 39 means an obligation whose fulfillment only enables the proper performance of this agreement and whose observance may be relied upon by the Purchaser.

## DISPUTES AND APPLICABLE LAW

Regarding clause 47 (to be replaced by the following):

The contract shall be governed by the substantive law of the Supplier's country to the exclusion of the UN Convention for contracts concerning international trade (CISG) of 11.04.1980.

### Supplemental provisions:

#### 1. Confidentiality

Both Parties shall undertake to handle all data and information (which becomes available in connection with the business start-up and development) with absolute secrecy for an unlimited period of time, especially where third parties are concerned and (unless required for the achievement of the

business objectives) shall neither record such data and/or information, pass it on to any third party, nor use it in any way.

#### 2. Disposal of waste electrical and electronic Equipment

a) The Purchaser accepts the responsibility to properly dispose of the delivered products at the end of their useful life at his own expense and in compliance with the legal regulations and thus exempts the Supplier from the obligation according to §10.2 ElektroG (obligation of the Supplier to take back delivered products) and associated claims.

b) The Purchaser has to contractually obligate commercial third parties to whom he resells the delivered products to properly dispose of them at the end of their useful life at their own expense and in compliance with the legal regulations, and to impose a corresponding transmission of obligation in case of another transfer.

c) If the Purchaser neglects to contractually obligate third parties to whom he transfers the delivered products to accept the disposal obligation and to transmit this obligation to possible other third parties, the Purchaser has to take back the delivered products at the end of their useful life at his own expense and to properly dispose of them in compliance with the legal regulations.

d) The statute of limitation of the Supplier's claim to the transmission of the obligation/exemption by the Purchaser is 2 years after the final end of product utilization. The limitation period begins at the earliest from the date the Supplier receives the Purchaser's written notice about the final end of utilization.

#### 3. Software use

Insofar as the scope of delivery includes software, the Purchaser will be granted a non exclusive right to use the delivered software including its documentation. The software shall only be used with the relevant delivery item. The use of the software on more than one system is prohibited.

The Purchaser may only copy, revise or translate the software or convert it from the object code into the source code to the legal acceptable extent (§§ 69 a ff UrhG). The Purchaser shall undertake not to remove manufacturers' instructions – particularly copyright notations – or change them without explicit prior approval by the Supplier. All other rights to the software and the documentation, including any copies, shall remain with the Supplier or with the software supplier. The granting of sublicenses is not permitted.

*Subject to change without notice*

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