

# Standard Contracting Terms

## for Sales, Subcontracting, and Installation Work (updated as of August 1, 2012)

of Peter Prinzing GmbH, Siechenlach 2, 89173 Lonsee-Urspring (Germany)

- hereinafter referred to as PRINZING-

### 1. Scope of Applicability

(1) These Standard Terms of Sale shall only and exclusively apply to agreements entered into with entrepreneurs within the meaning of BGB (Bürgerliches Gesetzbuch = German Civil Code) section 310 subsection 1. None of Orderer's terms and conditions which are inconsistent with or differing from these Standard Terms of Sale shall be binding on PRINZING unless they have expressly been accepted by PRINZING in writing.

(2) These Standard Terms of Sale shall also govern all future transactions with Orderer provided they are business transactions of a related kind.

### 2. Offer and Formation of Contract

If an order is to be considered an offer according to BGB section 145, PRINZING may accept this offer within two weeks of receipt thereof.

### 3. Delivered Data and Documents

PRINZING retains its ownership rights and copyrights to all data and documents such as calculations, drawings, etc., made available to Orderer in connection with the order placement process. These data and documents shall not be made accessible to any third party unless PRINZING gives Orderer express and written permission to do so. Should PRINZING not accept Orderer's offer (see section 2. above), these data and documents shall be returned to PRINZING without undue delay.

### 4. Prices and Payment

(1) Unless agreed otherwise in writing, PRINZING's prices shall apply "ex works" not including packaging plus sales tax at the rate applicable on the relevant date. Packaging expenses will be invoiced to Orderer separately.

(2) No cash discount shall be deducted unless a separate agreement to this effect has been made in writing.

(3) The purchase price shall be paid within 10 days of delivery of the goods unless agreed otherwise. Default interest will be charged at 8% above the basic interest rate per year as provided by statutory law. PRINZING is reserved the right to assert higher default damages.

(4) In any case of an increase of expenses for labor, materials or selling, PRINZING is reserved the right to reasonably adjust its prices for deliveries which are made three months or later after the contract has been entered into.

(5) Payments by check or draft shall not be permitted unless especially agreed upon in writing. Accepted drafts or customer drafts are only accepted as conditional payment, the cost and expenses attributable thereto shall be paid by the party obligated to make the payment. All outstanding debts shall become due for payment if the payment terms are not met or if a check or draft is dishonored. PRINZING is then entitled to terminate the contract in writing and to discontinue its work and to bill Orderer for all services performed by then on the basis of the agreed upon prices and to assert claims for compensation after having fixed an additional period of 12 workdays in a notice including a warning that the contract will be terminated.

### 5. Set-Off and Rights to Retain Payment

Orderer shall not set off any counterclaims unless such counterclaims are either declared to be meritorious by a final and unappealable judicial decision or undisputed. Moreover, Orderer shall not retain any payment unless its counterclaim is based on the same contractual relationship.

### 6. Time of Delivery

(1) The beginning of the delivery period specified by PRINZING is subject to the prior clarification of all relevant technical details. The defense of non-performance of the contract by the other contracting party is reserved by PRINZING if applicable.

(2) If Orderer delays taking delivery of PRINZING's performance or if it culpably breaches its obligations to cooperate, then PRINZING shall be entitled to claim compensation of any damages incurred insofar from Orderer including compensation of any additional expenditures incurred. PRINZING reserves all additional rights available to it.

(3) Should PRINZING culpably delay the delivery of any ordered items, then it shall be liable to pay liquidated damages in the amount of 0.5% of the value of those ordered items for each completed week of such a delay, the total of such damages not to exceed 5% of the value of those ordered items, however.

### 7. Passing of Risk in the Event of Shipment of Ordered Items

(1) PRINZING shall deliver the goods EXW from PRINZING's plant at Lonsee-Urspring (INCOTERMS 2010).

(2) If the goods are shipped to Orderer or to any third party upon Orderer's request, the risk of accidental destruction or of accidental deterioration of these goods shall pass to Orderer upon the delivery of the goods to the carrier/haulage contractor, no later, however, than when the goods leave the plant/warehouse. The former shall apply regardless if the goods are shipped from the place of performance of the contractual obligations or regardless who pays the freight.

### 8. Retention of Title

(1) PRINZING retains its ownership of the delivered item until all outstanding debts based on the supply contract have been paid in full. The same shall apply to all future deliveries even if PRINZING does not always expressly invoke this retention of ownership.

(2) Orderer shall treat the purchased item with care while ownership of this item has not yet passed to Orderer.

(3) In particular if goods of high value are delivered, Orderer shall obtain sufficient insurance coverage at its own expense against theft and damages by fire and water in the amount of the original value of the goods.

(4) If any maintenance work and/or inspection work needs to be performed, Orderer shall perform such work or have it performed in time at its own expense.

(5) While ownership of the delivered item has not yet passed to Orderer, Orderer shall immediately notify PRINZING in writing if the delivered item is seized or otherwise made the subject of any interference by any third party. To the extent any such third party is not capable of reimbursing PRINZING for the reasonable expenses of bringing a third party action to vacate such seizure or interference pursuant to ZPO (Zivilprozessordnung = German Rules of Civil Procedure) section 771, Orderer shall be liable to compensate PRINZING for any such reasonably incurred expenses.

(6) Orderer may resell the goods title to which is retained in the ordinary course of its business. Orderer is, however, now, already, assigning the claim for payment of the purchase price resulting against the purchaser as part of such resale to PRINZING in the amount of the invoice total (including sales tax) agreed upon with PRINZING. PRINZING accepts this assignment. This assignment shall be effective regardless if the purchased item is sold after having been processed or without having been processed. Pending revocation of its authorization to do so, Orderer shall remain authorized to collect on that claim even after it has been assigned to PRINZING, without prejudice, however, to PRINZING's right to collect on that claim itself.

(7) Any treatment or processing and/or transformation of the purchased item by Orderer shall always be performed in the name and on behalf of PRINZING while ownership of the purchased item is still retained by PRINZING. PRINZING is, thus, the owner of the treated or processed or transformed item in that case. In this case, Orderer's former prospective entitlement to the purchased item continues to exist as prospective entitlement to the treated or processed and/or transformed item.

(8) If Orderer confuses items owned by it with items owned by PRINZING which have not yet been paid for and title to which is so far retained, then PRINZING shall be the sole owner of the new item.

(9) For the purpose of securing those rights, Orderer also assigns such claims against third parties to PRINZING which accrue to Orderer as a result of the attachment of the item title to which is retained to PRINZING to a piece of real property and PRINZING is now, already, accepting this assignment.

(10) PRINZING agrees to release any respective collateral it is entitled to upon Orderer's request to the extent that the value of such collateral exceeds the claims to be secured by more than 20%.

### 9. Warranty (Liability for Defects)

PRINZING's liability for defects shall be governed by the provisions hereinafter:

There shall be no limitation to any liability arising under the Produkthaftungsgesetz (Product Liability Code) of the Federal Republic of Germany. The same shall apply whenever qualities are lacking that, by way of an exception, have been expressly warranted (BGB section 443), provided such warranty has been given for the particular purpose of securing Orderer against such damages that have not arisen in the delivered item itself.

(a) The period of limitation for all warranty claims (especially those pursuant to BGB section 438 subsection 1 item 3) shall be limited to 1 year only. Any case of intentional misrepresentation shall be exempt from the above limitation of the period of limitation. (b) The period of limitation shall commence at the time provided by the respective applicable statute.

(b) The period of limitation shall not be limited in terms of subitem 9 a above if any respective delivery item has, according to its customary use, been used for a structure and has caused the defectiveness of that structure. In that case, the statutory period of limitation specified in BGB section 438 shall apply instead. The period of limitation shall commence at the time provided by the respective applicable statute.

(c) If a used item is sold, PRINZING shall be exempt from any warranty (liability for defects). This exemption shall neither apply to cases of intentional misrepresentation nor to any liability for physical damages to persons nor to other damages caused intentionally or by grossly negligent conduct.

(d) PRINZING is entitled to at least 3 attempts to cure a defective performance.

(e) No such cure shall result in a new beginning of the limitation period.

(f) Orderer shall not complain of non-conformities of measurements and of designs of delivered materials which are non-material and which Orderer can be reasonably expected to accept, in particular if these items were delivered as a result of repeat orders, unless the observance of measurements and hues has been expressly agreed upon. Technical improvements and required technical changes shall also be treated as conformant to the contract provided they can reasonably be expected to be accepted and provided they do not result in value deterioration.

### (g) Supplemental Provisions for the Subcontracting Business

(aa) If **subcontracting services** are performed, PRINZING can only warrant that the construction of the ordered piece of work is performed in accordance with the data and documents it had knowledge of at the time the order was placed. The very operability or

usability of the ordered piece itself cannot be warranted and it shall be up to Orderer to examine that operability or usability before the piece of work is passed on/processed.

(bb) The period of limitation of defective performance related claims is limited to 1 year. Any case of intentional misrepresentation shall be exempt from the above limitation of the period of limitation. The period of limitation shall commence at the time provided by the respective applicable statute. The period of limitation shall not be limited if any delivered item has, according to its customary use, been used for a structure and has caused the defectiveness of that structure; in that case, the statutory period of limitation shall apply. The limited limitation period shall then be replaced by the statutory period of limitation. The period of limitation shall commence at the time provided by the respective applicable statute.

(cc) PRINZING disclaims any liability for materials not provided by PRINZING.

#### 10. Liability

(1) Claims for damages against PRINZING, its employees and/or its agents based on ordinary negligence and not relating to any injury to life, body and / or health are disclaimed by PRINZING to the maximum extent permitted by law. The former applies regardless if such claims result from breach of contract, or from the breach of secondary contractual duties, from tortious acts, or from the manufacturer's liability (due to faulty construction, faulty manufacture and faulty information as well as due to faulty product observation, e.g., BGB § 823). Liabilities arising under the Produkthaftungsgesetz (=German Product Liability Code) are not disclaimed.

(2) If material contractual duties (cardinal duties such as the procurement of ownership rights to the purchased item as part of a sales contract) are culpably breached, the resulting liability shall be extended to negligence committed by an executive body or a manager, limited, however, to those damages that are typical for the relevant contract and that are reasonably foreseeable. The above limitation of the resulting liability does not apply to any injury to life, body and/or health.

(3) In any case of a permitted liability limitation relating to non-gross negligence, the damages that are typical for the relevant contract and that are reasonably foreseeable shall not exceed 15% of the value of the respective order value. This limitation of PRINZING's liability does not apply to any injury to life, body and/or health.

(4.) There shall be no limitation to any liability arising under the Produkthaftungsgesetz (=Product Liability Code) of the Federal Republic of Germany.

(5.) Neither shall there be any limitation to any liability arising from lack of any quality that has, as an exception, been expressly warranted, provided such warranty had been given for the particular purpose of securing Orderer against such damages that have not arisen in the delivered item itself.

#### 11. Control of Exports

(1.) The purchased item may be subject to export restrictions (foreign trade provisions, e.g. of the EU or of the USA) for dual use goods and dual use technologies. Exports into certain non-EU countries may, therefore, be prohibited entirely or to a certain extent or may only be permitted with a special government permit. Orderer shall observe the export regulations and obtain the required permits (government permits if so required) in time.

(2.) Even if the export of a purchased item is subject to restrictions, Orderer shall nevertheless pay the full purchase price and take delivery of the machine. Section 9 hereof shall remain unaffected.

#### 12. Place of Performance and Place of Jurisdiction, Export Control, Miscellaneous

(1) Lonsee-Ursprung shall be the place of any performance of contractual duties and the exclusive place of jurisdiction over all disputes. PRINZING is additionally entitled to file suit against Orderer at its domestic or foreign registered office as well.

(2.) All contracts shall be governed by the laws of Germany without giving effect to the United Nations Convention on the International Sale of Goods (CISG).

(3.) Any modification and amendment shall be made in writing. The same shall apply to any modification of this written form requirement. The parties have not made any collateral oral agreements.

(4.) Should any provision hereof be or become invalid, then all other provisions shall remain unaffected by any such invalidity.

## Supplemental Standard Terms for Installation Work

#### 1. Scope of Applicability

(1) All orders for installation work accepted by PRINZING shall be governed by the above Standard Terms for Sales and Subcontracting and, supplementarily, by the Terms for Installation Work hereinafter.

(2) These standard business terms shall have precedence over any differing standard purchase terms or similar terms used by Customer. If PRINZING and Customer have continuous business relations, these terms shall be the basis for all future transactions.

#### 2. Offers and Offer Documents

(1) Any descriptive documents pertaining to any respective offer, such as illustrations, drawings, and particulars as to weights and measures, shall only be deemed to be relevant if they have been explicitly identified as binding under any respective agreement. The modifications are unreasonable and no longer acceptable if they exceed the extent which is typical for the relevant line of business. PRINZING hereby reserves to itself all of its ownership interests and copyrights in any cost estimates, drawings and other descriptive documents.

(2) Without PRINZING's permission, none of the property and copyright interests in the offer and none of the descriptive documents shall be made available to third parties or be published or be copied or be used for any other purpose than the agreed upon purpose.

(3) Customer shall obtain all licenses or other permits at its own expense. PRINZING shall make the documents required for obtaining such licenses or other permits available to Customer.

(4) Unless otherwise provided by individual agreement, the offer shall only include those additional services which are mentioned in it. Any other work in excess thereof shall be paid for separately.

#### 4. Prices and Payment

(1) The price is quoted net and will be added sales tax at the rate applicable on the relevant date.

(2) If continuous obligations are entered into or if agreements include times for delivery or performance of more than 4 months following the formation of the agreement, PRINZING is entitled to demand that prices be renegotiated in case the prices of the items hereinafter have been subject to increases: prices for the total of the required materials as of the formation of the agreement, or wages or payroll fringe costs due to changed laws or due to changes in collective bargaining agreements, or the sales tax.

(3) Later requested overtime working hours, night time working hours, Sunday and holiday working hours and any work performed under difficult conditions which was unforeseeable for PRINZING shall be subject to the pertinent supplementary and additional charges shown in the relevant collective wage agreements.

#### 5. Time of Delivery and Installation

(1) If no deadlines for the performance of the work have been agreed upon, the work may be commenced immediately after the order has been acknowledged, no later, however, than 12 workdays following a request by Customer to get the work started. The deadline for the performance of the work shall not begin to run until Customer has made the documents required according to item 2 above available, until the installation work at the construction site can be started without hindrance and until a possibly stipulated down payment has been received by PRINZING.

(2) If the beginning, the continuation, or the completion of the work is delayed due to circumstances within Customer's control and if Customer fails to cure the delay immediately upon PRINZING's request, PRINZING shall be entitled to claim damages and and still have the contract upheld or to fix a reasonable period for Customer to perform the contract and to declare that PRINZING will terminate the contract and possibly even claim damages if the period so fixed expires to no avail. PRINZING reserves all additional rights including without limitation the right to claim damages.

(3) If a contract is terminated, PRINZING shall in addition to its so far originated claims for payment under the contract be entitled to compensation of any additional expenses incurred such as expenses PRINZING had to pay for the unsuccessful offer and for storing and maintaining the item PRINZING was bound to deliver.

#### 6. Acceptance of Delivery and Passing of Risk

(1) The risk shall pass to Customer when the delivery of the purchased item is accepted. If Customer delays acceptance of the delivery of the purchased item, the risk shall pass to Customer upon the commencement of the delay. The same shall apply if the installation work is discontinued due to circumstances within Customer's control and if PRINZING has handed over the delivered item and the work performed until then into Customer's custody.

(2) The item shall be taken delivery of without culpable delay after the work has been completed.

(3) The same shall apply to independent portions of any work.

#### 7. Warranty Claims and Damages

(1) Customer shall not complain of non-conformities of measurements and of designs of delivered materials which are non-material and which Customer can be reasonably expected to accept, in particular if these items were delivered as a result of repeat orders, unless the observance of measurements and hues has been expressly agreed upon. Technical improvements and required technical changes shall also be treated as conformant to the contract provided they can reasonably be expected to be accepted and provided they do not result in value deterioration.

(2) If cutting work, thawing work and/or brazing or soldering work is to be performed, Customer shall advise PRINZING of any risks and peculiarities (such as fire hazards in rooms or flammable materials) and take all safety measures (such as posting fire watches, providing fire extinguishing materials, etc.).

(3) Neither PRINZING nor its agents nor its employees or servants shall be liable for damages claimed on the basis of BGB sections 280 and 311 provided such damages are not also caused by the breach of a principal obligation under any respective contract by PRINZING and unless such damages have been caused intentionally or grossly negligently. This limitation of liability clause does not apply to claims for damages based on the absence of the contractually agreed upon suitability of any item which had the purpose of protecting Customer against the risk of damages consequential to a defect. Claims for damages based on the statutory liability for defective products shall remain unaffected thereby just as well as any liability for injuries to life, body or health.

(4) Section 10 of the above Standard Contracting Terms for Sales and Subcontracting Work shall also apply.