

### 1. Validity and customer base

- (1) All of **PADCON GmbH's** (hereinafter referred to as "**PADCON**") deliveries, services and offers are subject to these general terms of sale (hereinafter referred to as "**GTS**"). These form part of all contracts concluded by PADCON with its contractual partners (hereinafter referred to as "**Customers**") regarding the goods and services offered by PADCON.
- (2) The GTS also apply to all future deliveries, services or offers made to the Customer, even if they are not separately agreed upon.
- (3) Customer or third-party terms and conditions do not apply, even if PADCON fails to separately contradict their validity in individual cases. Even if PADCON receives a letter containing or referring to the terms and conditions of the Customer or a third party, this shall not constitute agreement with those terms and conditions.
- (4) PADCON's product range is aimed at businesses. For purposes of these GTS a "business" means a natural or legal person or a legal partnership who/which, in concluding the contract, is acting in its commercial or independent professional capacity (Section 14(1) BGB [German Civil Code]).

### 2. Offer and contract conclusion

- (1) All offers made by PADCON are non-binding and without obligation, unless they are not explicitly marked as binding or contain specific period for taking delivery.
- (2) The contract is concluded by offer and the taking of delivery. Orders and requests may be accepted by PADCON within 14 (fourteen) days of receipt.
- (3) If the Customer has yet to submit documents regarding the offer, the period for taking delivery begins one week after receipt of the Customer's documentation.
- (4) Details of the properties and performance of the products given in catalogues, drawings, illustrations, dimensions, weights, technical documentation and other product specifications are binding only if this is expressly agreed in writing.
- (5) The written contract, including the GTS, shall exclusively govern the legal relationship between PADCON and the Customer. This contract reflects all agreements between the contractual parties in full. Verbal commitments made by PADCON prior to this contract are legally non-binding and oral agreements between the contractual parties shall be replaced by the written contract, provided that in each case it is not expressly stated therein that they remain in force.
- (6) Additions and modifications to agreements made, including to these GTS, shall be effective only if in writing. With the exception of managing directors or authorised signatories, PADCON employees are not authorised to make verbal agreements which deviate from this. Written form includes transmission by telecommunications, in particular by fax or email, provided that a copy of the signed declaration is submitted.
- (7) Details provided by PADCON regarding the object of delivery or service (e.g. weights, dimensions, utility values, load capacity, tolerances and technical data) and PADCON's representations of the same (e.g. drawings and illustrations) are only approximate, unless usability for the contractually intended purpose requires exact precision in this respect. They are not warranted characteristics, rather they are descriptions or designations of the delivery or service. Customary deviations occurring due to legal regulations or technical improvements, as well as the replacement of components with equivalent parts, are permitted insofar as they do not affect usability for the contractually intended purpose.
- (8) PADCON reserves the ownership or copyright regarding all PADCON offers and cost estimates made, as well as those regarding drawings, diagrams, calculations, brochures, catalogues, models, tools and other documents and aids provided to the Customer. Without the express consent of PADCON, the Customer may not provide third-parties with access to these objects – either as they are or their contents – nor post them or use or duplicate them via third parties. Upon PADCON's request, the Customer must return these items to PADCON and destroy any copies if they are no longer needed by the Customer in the ordinary course of business or if negotiations do not lead to the conclusion of a contract.

### 3. Delivery item

- (1) The right to make structural or design modifications due to technology improvements or as required by law shall remain reserved during the delivery period, provided that the delivery item is not substantially changed and the changes are reasonable for the Customer.
- (2) If the delivery item is no longer available, PADCON reserves the right to replace it with another equivalent product.
- (3) PADCON reserves the ownership and copyright regarding illustrations, drawings, calculations and other documents. This also applies to written documents that are designated as "confidential". Before passing the latter on to third parties, the Customer's requires PADCON's express written consent.
- (4) Delivery does not include the assembly and commissioning of the item.
- (5) If installation and assembly have expressly agreed, the Customer must undertake and provide at its own expense and in good time:  
All earthworks, construction work and other ancillary works including skilled and unskilled labour required for this; the materials and tools required for assembly and commissioning, such as scaffolds, lifting equipment and other devices; fuels and lubricants; energy and water at the point of use including connections, heating and lighting; at the assembly site: sufficiently large, suitable, dry and lockable rooms for the storage of machine parts, apparatus, materials, tools etc.; for the assembly personnel: appropriate working and recreation spaces including appropriate sanitary facilities; in addition, the Customer must undertake measures on-site to protect the possessions of PADCON and those of the assembly personnel, as it would undertake to protect its own property; protective clothing and apparatus as necessary due to special circumstances at the assembly site.
- (6) Before starting the assembly work, the Customer must provide the necessary information about the location of concealed electricity, gas and water lines or similar installations, as well as the necessary structural data.
- (7) Before starting the installation or assembly, the materials and equipment required in order to commence the work must be located at the installation or assembly site, and any preparatory work must be so far advanced before the start of construction that the installation or assembly can be started and carried out as agreed without interruption. Access roads and the installation or assembly site must be level and clear.
- (8) If the installation, assembly or commissioning is delayed due to circumstances for which PADCON is not responsible, the Customer must bear the reasonable costs for the waiting time and any additionally-required journeys made by PADCON or by the assembly staff.
- (9) The Customer must provide PADCON with evidence every week as to the hours worked by the assembly staff, and of the completion of the installation, assembly or commissioning.

### 4. Delivery and delivery time

- (1) Deliveries are made ex works (EXW Incoterms 2010).
- (2) Deadlines and dates for deliveries and services proposed by PADCON are only ever approximate, unless a fixed period or a fixed deadline has been expressly promised or agreed. If shipping has been agreed, delivery times and dates refer to the time of delivery to the carrier, freight forwarder or other third parties responsible for the transportation.
- (3) PADCON may – without prejudice to the rights arising from default by the Customer – demand that the Customer extends delivery and service deadlines or a postponement of delivery and service deadlines, where such extension is equal to the period in which the Customer fails to meet its contractual obligations vis-à-vis PADCON.
- (4) The delivery period begins upon dispatch of the order confirmation, but not before any necessary provision by the Customer of documents, permits, approvals, nor before the receipt of an agreed advance payment.
- (5) PADCON is not liable for the impossibility of delivery or for delays in delivery, insofar as they are caused by force majeure or other events which cannot be foreseen at the time of contract conclusion (e.g. malfunctions of any kind; difficulties in obtaining materials or energy; transport delays; strikes; lawful lockouts; shortage of labour, energy or raw materials; difficulties in obtaining necessary regulatory approvals; action by the authorities; or the lack of delivery, incorrect delivery or late delivery by suppliers), for which PADCON is not responsible.

Insofar as such events complicate PADCON's delivery or service or make them impossible, and the hindrance is not merely of temporary duration, PADCON is entitled to withdraw from the contract. If there are obstacles of temporary duration, the delivery or service periods will be extended, or the delivery or service deadlines will be postponed by the period of the delay plus a reasonable start-up period. Insofar as PADCON cannot be expected to accept the delivery or service as a result of the delay, PADCON may withdraw from the contract, by sending immediate written notice to the Customer.

(6) The Customer may request that PADCON delivers 6 (six) weeks after a non-binding delivery deadline or delivery period has passed. Upon receipt of the request, PADCON is in default. If the Customer wishes to cancel the contract or claim damages, it must grant PADCON a reasonable timeframe for delivery after 6 (six) weeks have elapsed.

(7) PADCON is entitled to make partial deliveries only if (i) the partial delivery can be used by the Customer within the scope of the contractual purpose, (ii) the delivery of the remaining ordered goods is ensured and (iii) the Customer incurs no major additional effort or cost – unless PADCON agrees to assume such costs.

(8) If PADCON is delayed with a delivery or service or it cannot perform a delivery or service for whatever reason, PADCON's liability is limited to the compensation for damages provided in Art. 11 of these GTS.

#### **5. Place of performance, shipping, packaging, transfer of risk, acceptance**

(1) The place of performance for all obligations under the contract is Kitzingen, unless otherwise stated. If PADCON is also due to provide installation, the place of performance is that where the installation is to occur.

(2) The shipping method and packaging are subject to PADCON's professional judgment.

(3) The risk is transferred to the Customer at the latest upon handover of the goods – whereby the start of the loading procedure is definitive – to the shipper, carrier or other third party executing the dispatch. This applies even in the case of partial deliveries or if PADCON is to undertake other services (e.g. shipment or installation). If delivery or handover is delayed as a result of circumstances for which the Customer is responsible, the risk is transferred to the Customer from the day on which the delivery item is ready for shipment and PADCON has informed the Customer of this.

(4) Storage costs incurred after the transfer of risk shall be borne by the Customer. If stored at PADCON's premises, the storage costs amount to 2 (two) percent of the net invoice price of the delivery item to be stored per week or part thereof. The right to assert and prove additional or lower storage costs is reserved.

(5) The packaging ordinance provides for returns, but not an obligation to retrieve. That is to say that the costs of return transport are not covered by PADCON. Non-free packaging returns will not be accepted.

(6) If acceptance is to take place, the subject matter of the contract shall be deemed accepted if (i) the delivery and – to the extent that PADCON is due to effect installation – the installation is complete, (ii) PADCON has communicated this to the Customer, noting the provision relating to deemed acceptance under this paragraph, and has requested that the Customer accepts the item, (iii) 12 (twelve) working days have passed since delivery or installation, or since the Customer began to use the subject matter of the contract (e.g. since the delivered system has been in operation) and in this case, six (6) working days have passed since delivery or installation, and (iv) the purchaser fails perform acceptance within this period for a reason other than because of a defect reported by PADCON, where this defect makes the use of the subject matter of the contract impossible or substantially impairs such use.

#### **6. Pricing and payment**

(1) The prices are for the scope of service and delivery specified on the order confirmations. Additional or special services will be charged separately. Prices are given in Euro (EUR) ex works, exclusive of packaging, VAT, freight, (for exports) customs, as well as fees and other public levies. The shipment will be insured by PADCON only at the express request of the Customer, and at the latter's expense, against theft, breakage, transport, fire and water damage or other insurable risks.

(2) Insofar as the prices agreed upon are based on PADCON's list prices and delivery is due to occur more than four (4) months after the contract is concluded, PADCON's list prices as valid at the time of delivery shall apply.

(3) For service contracts, the services will be charged according to the time and expense. The cost of labour and travel time and any tariff surcharges and the consumption of components/materials will be charged separately. If a repair cannot be performed due to the error not being described, the Customer must bear the resulting testing costs. The billing rates for labour and travel time are offered and calculated based on the prevailing rates.

(4) Unless the contract stipulates otherwise, the purchase price is to be paid immediately in cash upon delivery of the goods. The date on which PADCON receives the payment is decisive in terms of the valid payment date. Cheques are only valid as payment following encashment. The Customer is deemed to be in default vis-à-vis PADCON the day after the due date, insofar as it has not paid. No notice of this is required.

(5) If the Customer does not make due payment, the outstanding amounts will be subject to 5 (five) percent p.a. interest as from the date on which they become due; the assertion of higher interest and further damages in the event of default remain unaffected.

(6) The Customer may only offset claims that are recognised by PADCON, are undisputed or are legally binding. It is entitled to exercise a right of retention only when its counterclaim is based on the same contractual relationship. The counterclaim must also be recognised, undisputed or legally binding.

(7) PADCON is entitled, notwithstanding any provision of the Customer, to initially offset against the older debts of the latter. PADCON will immediately inform the Customer of the offsetting. Where costs and interest has already accrued, PADCON is entitled to first offset the payment against the costs, then against the interest and then against the main amount owed.

(8) PADCON is entitled to effect or render any outstanding deliveries or services only against advance payment or deposit, if PADCON becomes aware – after contract conclusion – of circumstances which significantly reduce the creditworthiness of the Customer and through which the payment of the PADCON's outstanding claims against the Customer from the respective contract (including those from individual orders for which the same framework contract applies) is endangered.

#### **7. Withdrawal and cancellation fees**

(1) The Customer can only withdraw [from the contractual arrangements] in accordance with legal provisions if PADCON is responsible for the breach of duty; in the case of defects, however, the statutory requirements continue to apply. In the event of a breach of duty, the Customer must inform PADCON within a reasonable period of time after having been requested to do so, whether it is withdrawing due to the breach of duty or whether it is insisting on the delivery being performed nonetheless.

(2) If the Customer withdraws from a placed order and this withdrawal is unjustified, PADCON may, without prejudice to the possibility of asserting higher actual damages, demand 10 (ten) percent of the sales price for the costs incurred in processing the order and for lost profits. The Customer is entitled to prove lower damages.

#### **8. Delay in taking delivery**

(1) If the Customer does not fulfil its delivery-taking obligations within 2 (two) weeks from the date of delivery or, if an exact delivery date not been agreed, within 2 weeks after PADCON sends notification of readiness for shipment, then PADCON may grant the Customer an additional delivery-taking period of 8 (eight) calendar days.

(2) If the Customer does not take delivery of the delivery item within this period, then PADCON is entitled to withdraw [from the contractual arrangements].

(3) PADCON's entitlement to damages for breach of contract amounts to fifteen (15) percent of the net price of the not-taken delivery item. The parties reserve the right to prove the incurrance of higher or lower damages.

#### **9. Warranty, material defects**

(1) The warranty period is one year from delivery or, if acceptance is required, one year from acceptance.

(2) The goods supplied must be carefully inspected immediately after delivery to the Customer or to any third party it has designated. They are deemed to have been approved by the Customer in terms of obvious defects or other defects that would have been recognised during an immediate, thorough investigation, if PADCON receives no written complaint within seven (7) working days after delivery.

Regarding other defects, the delivery items shall be deemed approved by the Customer if PADCON does not receive a complaint within seven (7) business days after the date on which the defect was discovered; however, if the Customer became aware of the defect in the course of normal use at an earlier date, this earlier date shall prevail as the start of the notice period. At PADCON's request, a delivery item which is the subject of a complaint is to be returned to PADCON, carriage prepaid. In the case of a justified complaint, PADCON will reimburse the cost of the cheapest dispatch method; this shall not apply if the costs increase because the delivery item is located in a place other than the place of intended use.

(3) The warranty does not cover minor deviations from the agreed quality or minor impairments to usefulness.

(4) Warranty claims are furthermore excluded if the assembly of a system is not in accordance with the assembly instructions of the manufacturer or of PADCON. It should be ensured that the assembly instructions are in their current version as at the time of delivery. Any updates effected after delivery but before assembly must be observed. Another prerequisite for defect claims is compliance with the requirements in the project-related materials plan. Compliance with the assembly instructions is also a prerequisite for any manufacturer warranties given by the manufacturer. If the Customer receives defective assembly instructions, PADCON is merely obliged to deliver defect-free assembly instructions, and then only if the defective instructions are an obstacle to proper assembly. Defect claims are not valid in the case of minor deviations from the agreed quality or of minor impairments to usefulness.

(5) In the case of material defects to the delivery item, PADCON is obliged and entitled – at its discretion, taken within a reasonable timeframe – to initially choose between effecting a repair or a replacement. In the case of the rectification of the defect, the costs incurred in rectifying the defect, in particular transport, travel, labour and material costs, are excluded if they increase because the goods have been transported to a location other than that intended. Unless otherwise agreed in individual contracts, the intended location must be situated in Germany.

(6) A repair is deemed to have been a failure after the second unsuccessful attempt, unless the contrary becomes clear from the nature of the goods or of the defect, or from other circumstances. If the repair attempt fails – i.e. it is impossible, unreasonable or unduly delayed – or if PADCON has refused such an attempt altogether, the Customer may choose either to demand a reduction of the purchase price or to withdraw from the contract.

(7) If a defect is the fault of PADCON, the Customer may demand compensation under the conditions laid out in Section 11.

(8) In the case of other manufacturers' components exhibiting defects which PADCON cannot eliminate for licensing or actual reasons, PADCON will elect either to assert its warranty claims against the manufacturer and supplier on behalf of the Customer or assign such claims to the Customer. Warranty claims against PADCON exist in the case of such defects under the other conditions and in accordance with these GTS only if the extra-judicial enforcement of the aforementioned claims against the manufacturer and the supplier has been unsuccessful or is futile, for example due to insolvency. During any legal dispute, the limitation period of the Customer's relevant warranty claims against PADCON is suspended.

(9) The warranty is void if the Customer modifies the delivery item without PADCON's consent or has it modified by third parties, thus rendering rectification impossible or unreasonably difficult. In any case, the Customer must bear the additional rectification costs incurred as a result of the modification. **The Customer should also note that any guarantees issued by the manufacturer may be inapplicable due to such modification.**

(10) If, in an individual instance, the delivery of used goods is agreed with the Customer, this will occur to the exclusion of any warranty for material defects.

## 10. Property rights

(1) In accordance with this Section 10, PADCON is responsible for checking that the delivery item is free of industrial property rights or third-party copyright. Each contractual party will immediately notify the other party in writing if any claims of infringement of such rights are asserted against it.

(2) In the event that the delivery item infringes any industrial property rights or third-party copyright, PADCON will choose whether to amend or replace the delivery item at its own expense, such that no third-party rights are infringed, so that the delivery item continues to fulfil the contractually-agreed functions, or ensure the Customer has a right to use the item via a licence agreement. If it does not manage to do so within a reasonable timeframe, the Customer is entitled to withdraw from the contract or reduce the purchase price appropriately. Any claims for damages of the Customer are subject to the restrictions of Section 11 of these GTS.

(3) In the case of rights violations by other manufacturers' products supplied by PADCON, PADCON will choose whether to assert its claims against the manufacturers and suppliers on behalf of the Customer or assign such claims to the Customer. Claims against PADCON exist in these cases, in accordance with this Section, only if the legal enforcement of the aforementioned claims against the manufacturers and suppliers has been unsuccessful, or has been futile, for example due to insolvency.

## 11. Exclusion of liability

(1) PADCON's liability for damages, regardless of the legal grounds, and especially due to impossibility, delay, defective or incorrect delivery, breach of contract, breach of obligations in contract negotiations and tort, and in so far as it is a matter of fault, is limited in accordance with Section 11.

(2) PADCON shall not be liable in cases of the ordinary negligence of its executive bodies, legal representatives, employees or other agents, unless it is a case of a breach of essential contractual obligations. Included under the term "essential contractual obligations" are: the obligation to perform the timely delivery and – if agreed – the timely installation of the delivery item; its freedom from defects that would impair its functionality or suitability for use by more than a merely irrelevant amount; advisory obligations, protection obligations and care obligations which should facilitate the Customer's contractual use of the delivery item or which aim to protect the lives and health of the Customer's personnel or their property object from significant damage.

(3) Insofar as PADCON is essentially liable for the damages in accordance with paragraph 2, this liability is limited to the damages which PADCON foresaw as a possible consequence of a breach of contract when the contract was concluded or which PADCON should have foreseen in its application of due diligence. Indirect or consequential damages resulting from defects in the delivery item are also only eligible for compensation if such damage is typically to be expected as a result of the normal use of the delivery item.

(4) In the case of liability for simple negligence, PADCON's liability to day damages for property damage and resulting loss of assets is limited to an amount of EUR 10 million per claim, even if this concerns a breach of essential contractual obligations.

(5) The above exclusions and limitations apply to the same extent in favour of executive bodies, legal representatives, employees and other PADCON agents.

(6) Insofar as PADCON provides technical information or acts as a consultant, and this information or advice does not form part of scope of service which it is due to render and which is contractually agreed, this is done free of charge and to the exclusion of any liability.

(7) The limitations given in this Section do not apply to PADCON's liability in the case of deliberate conduct, for guaranteed characteristics, for injury to life, limb or health or under the German Product Liability Act.

## 12. Limitation period

(1) The limitation period for claims and rights due to defects in the deliveries – for whatever legal reason – is one year. However, this does not apply in the case of Section 438(1) no. 1 BGB (Legal defects for purchased things), Section 438(1) no. 2 BGB (Buildings, things used for buildings) or Section 634(1) no. 2 BGB (Buildings and in the case of a work whose result consists in the rendering of planning or monitoring services for this purpose).

(2) Unless expressly stated otherwise, the legal provisions regarding the limitation period, the expiry suspension, and the suspension and restart of time limits remain unaffected.

(3) The above regulations do not entail a change in the burden of proof to the detriment of the Customer.

### **13. Retention of title**

(1) The subsequently agreed retention of title serves to secure all of PADCON's current and future claims against the Customer arising from the supply relationship agreed between the contractual parties regarding the goods (including outstanding balance claims arising from a current account relationship limited to this supply relationship).

(2) The goods delivered by PADCON to the Customer goods remain the property of PADCON until full payment of all claims. The goods, as well as those goods which replace them according to the following provisions and which are covered by the retention of title, are hereinafter referred to as "**Retained Goods**".

(3) The Customer shall store the Retained Goods for the seller free of charge.

(4) The Customer is entitled to process and dispose of the Retained Goods until the occurrence of the enforcement event (paragraph 9) in the normal course of business. Pledges and transfers by way of security are not permitted.

(5) If the Retained Goods are processed by the Customer, it is agreed that the processing is done in the name and for the account of PADCON as the manufacturer and that PADCON directly acquires ownership or – if the processing is performed using materials from several owners or if the value of the processed item is higher than the value of the Retained Goods – co-ownership (fractional ownership) of the newly-created object, in proportion to the value of the Retained Goods to the value of the newly-created object. In the event that no such acquisition of PADCON ownership should occur, the Customer hereby pledges to transfer its future ownership or – in the above proportion – co-ownership of the newly-created item as security to PADCON. If the Retained Goods are formed into a single unit or are inseparably mixed and if one of the other objects are considered to be the main object, PADCON will transfer to the Customer, insofar as the main object belongs to PADCON, the proportionate ownership of the single unit in the proportion stated in sentence 1 above.

(6) In the event of resale of the Retained Goods, the Customer hereby assigns to PADCON, by way of security, the claims against the purchaser resulting from this – and in the case of PADCON's co-ownership of the reserved goods, in proportion to the share of ownership. The same applies to other claims that take the place of the Retained Goods or which otherwise arise with regard to the Retained Goods, e.g. insurance claims or tort claims for loss or destruction. PADCON authorises the Customer to collect the receivables assigned to PADCON in its own name. PADCON may revoke this authorisation to collect only in the event of enforcement.

(7) If third parties take hold of the Retained Goods, in particular by seizure, the Customer will immediately indicate PADCON's ownership and will inform PADCON thereof, so as to enable PADCON to enforce its property rights. If the third party is not in a position to reimburse PADCON for the judicial or extrajudicial costs arising in connection with this, the Customer shall be liable for these vis-à-vis PADCON.

(8) PADCON will release the Retained Goods and any objects or claims taking their place if their value exceeds the amount of the secured claims by more than 20%. PADCON will select the items to be released thereafter.

(9) If PADCON withdraws from the contract (enforcement event) following a contractual breach by the Customer – in particular default in payment –, PADCON is entitled to demand the Retained Goods.

### **14. Jurisdiction - Severability**

(1) If the Customer is a merchant, a legal entity under public law or a public special fund or has no general jurisdiction in the Federal Republic of Germany, the place of jurisdiction for any disputes arising from the business relationship between PADCON and the Customer will be – at PADCON's discretion – either Würzburg or the place in which the registered office of the Customer is located.

However, with regard to complaints against PADCON, Würzburg is the exclusive jurisdiction in these cases. Mandatory statutory provisions regarding exclusive jurisdiction remain unaffected by this regulation.

(2) The relationships between PADCON and the Customer are exclusively subject to the laws of the Federal Republic of Germany to the exclusion of the provisions of private international law. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall not apply.

(3) Insofar as the contract or these GTS contain loopholes, legally valid provisions are deemed to be agreed in order to fill these loopholes, where the parties would have agreed to such provisions in accordance with the economic objectives of the contract and with the purpose of these general terms of sale, if they had known about the loophole.

#### **Note:**

The Customer is aware that PADCON stores data arising from the contractual relationship under Section 28 of the German Federal Data Protection Act for the purposes of data processing, and reserves the right to furnish third parties (e.g. insurance companies) with the data to the extent that this is necessary to fulfil the contract.