

# General Terms of Sale of ProdEq Trading GmbH

## 1. Scope of Application

ProdEq Trading GmbH, Reckholder 1, 9527 Niederhelfenschwil, Switzerland (hereinafter referred to as "ProdEq") purchases, sells, auctions or brokers used, refurbished and new commercial and industrial equipment (hereinafter "Goods") as well as related services both in its own name and in the name and for the account of third parties. If ProdEq is acting for and on behalf of third parties, this will be disclosed.

The term "Seller" shall hereinafter be used for ProdEq as Seller on its own name, respectively for the third party in whose name and for whose account ProdEq is acting.

These General Terms of Sale shall apply to all offers as well as to the sale of Goods and services of ProdEq or the Seller, respectively, to legal entities as well as natural persons with unlimited legal capacity, insofar as they act in the exercise of their commercial or self-employed activity (hereinafter referred to as "Customers").

If an individual contract has been agreed, these general terms of Sale shall apply in addition and subordinate unless they have been explicitly excluded. Other terms of the Customer shall only become part of the contract if this has been expressly agreed in writing.

## 2. other applicable documents

- for auctions or tender sales, project-specific terms and conditions will apply additionally
- if ProdEq is conducting a sale in the name of a third party, the general terms as well as additional terms of the third party apply as well
- the "Special Terms and Conditions concerning the Reservation of Title of ProdEq Trading GmbH" shall apply to all sales

All applicable terms will be published on [www.prodeq.com](http://www.prodeq.com), announced with ProdEq's offers sent together with the order confirmation, or their acceptance is a prerequisite for registration and admission to an auction or a tender procedure.

In the event of contradictions between the General Terms of Sale and above additional terms and conditions, the General Terms of Sale shall prevail.

## 3. Exclusions from Business Relation

ProdEq does not conclude contracts with private individuals who act for their personal or family needs (consumers). In case a consumer is acting nonetheless, no contract is constituted with such consumer.

By registering for a tender or an auction, the registrant confirms that he/she is not a consumer in the above sense.

In the case of auctions or tenders, ProdEq may

- make the admission of a Customer to the procedure dependent on a security deposit to be provided in advance (e.g., bank guarantee) and
- exclude bidders from the procedure at any time without giving reasons.

## 4. Offers and Conclusion of a Contract

The offers, tenders, auction items and publications of ProdEq are always subject to change and can be withdrawn in general or for individual Customers and offered again without giving reasons at any time before the conclusion of a contract.

By issuing an order, Customers accept these General Terms of Sale and remain bound to their order for 3 weeks. A sales contract between a Customer and the Seller is only concluded upon written confirmation (including email) by ProdEq.

Bids made verbally, in writing (including email) or electronically are equivalent to an order. Bids within the framework of an auction or a tender procedure shall remain valid for 3 weeks beyond the end date of the procedure published by ProdEq. Bids remain valid even if higher bids are received from third parties. In the case of bids, the sales contract shall be concluded by the acceptance of the bid. The acceptance of the bid is at the sole discretion of ProdEq. Bids may be rejected without giving reasons.

Several Goods sold at the same auction or tender constitute a single contract, even if individual bids have been placed.

## 5. Scope of Supply and Services

The written confirmation of the order resp. the invoice shall be the sole reference for the scope of supply and services.

## 6. Condition of the Goods, Exclusion of Warranty

All Goods are sold in the condition and quantity "as is" at their current location "where is" at the time of the conclusion of a sales contract and any presence of hazardous substances.

The legal liability for defects (warranty) is excluded. All deliveries by the Seller are made to the exclusion of guaranteed characteristics (guarantees).

Documents issued by ProdEq or the Seller, respectively, before the conclusion of a contract or thereafter, e.g., data sheets, drawings, plans, may contain information on the quality and quantity of Goods or information on their use, such as model codes, serial numbers, years of manufacture, technical data, dimensions, foundation details, quantities, condition details. All such details do not have the character of confirmed properties but represent non-binding information unless they are expressly designated as binding. This also applies to language translations.

Photographs and videos may show several items. These do not document the scope of delivery of the goods.

The indication of prices does not constitute an assurance of a specific market value.

Prospective purchasers are required, in coordination with ProdEq, to convince themselves personally of the properties and condition of the goods by means of an inspection. ProdEq will provide the possibility of inspections according to the circumstances.

The Customer waives all and any warranty or damage claims against ProdEq or the Seller, respectively, in respect of the properties of the Goods, or the absence of properties or the presence of defects or damages and indemnifies ProdEq or the Seller, respectively, against all and any claims of third parties in respect of the Goods, on whatever legal reason. This also applies if properties, their absence or defects or damages were already inherent in the goods before the transfer of risk.

If the Seller exceptionally warrants based on explicitly warranted properties in writing, the Customer's warranty rights shall be conditional upon the Customer having duly complied with his obligations to inspect the goods and to give notice of defects.

If Sellers liability for defects comes into consideration, due to explicit warranty the following provision shall apply:

- The Seller shall be entitled, at its sole discretion, to remedy the defect (rectification) or to deliver a replacement (substitute delivery).
- If the Seller is not willing or not in a position to rectify the defect or deliver a replacement or if the rectification or replacement is delayed beyond a reasonable period or fails in any other way, the Customer shall be entitled, at its option, to rescind the contract (cancellation) or to reduce the purchase price (reduction).

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## 7. Contract Value

The contract value shall consist of

- a) the net prices
- b) the value of additionally agreed services (dismantling, transport, etc.)
- c) in the case of auctions and tender procedures, the estimated surcharge
- d) plus, the statutory sales taxes on all the above items.

## 8. Export Deliveries, Deposit for Sales Tax

If sold goods are intended for export and the Customer collects the goods in the country of dispatch, sales taxes of the country of dispatch shall be paid to the Seller as a deposit.

After timely presentation of properly issued export certificates, refundable sales taxes will be refunded. In the case of Intra-Community deliveries within the European Union, a confirmation of receipt and a valid VAT number of the recipient country issued in the name of the Customer must be provided instead of an export certificate.

Damages incurred by the Seller due to the Customer's failure to comply with the tax regulations of national or international business transactions (e.g., incorrect VAT identification number) shall be compensated by the customer.

## 9. Payment Terms

Unless otherwise agreed between the contracting parties, the contract value pursuant to Art. 7 including any deposit pursuant to Art. 8 shall be due for payment without any deduction within 5 working days after the conclusion of the sales contract.

Offsetting against counterclaims of the Customer is only permitted for such claims which are undisputed or have been legally established.

**Caution:** Invoice documents are not fraud-proof, particularly in the case of electronic issuance/submission. It is the Customer's responsibility to verify the account owner of given account numbers (IBAN) before initiating payment. ProdEq or the Seller, respectively, accept no liability for misdirected payments to unauthorized account holders.

## 10. Transfer of Risk

Unless INCOTERMS have been agreed between the parties, the risk of loss, deterioration, damage, theft, or misdirection shall pass to the customer upon the conclusion of the sales contract (see Article 4).

The Customer is requested to arrange insurance for his goods.

After the transfer of risk, ProdEq or the Seller, respectively, shall be liable exclusively for their own actions on the goods or those of their vicarious agents. ProdEq or the Seller, respectively, shall not be liable for any omissions after the transfer of risk.

## 11. Handing Over, Delivery, Schedules

The handover or delivery shall take place after unconditional receipt of the full payment of the contract value in accordance with Art. 7 including any deposit in accordance with Art. 8 to the account designated by ProdEq or the Seller, respectively, on the invoice.

### a) If no Delivery by the Seller or "ex location or foundation" has been agreed,

the Goods shall be handed over to the Customer at their current location "where is" in the condition as existing "as is".

With the handover, the possession as well as the liability for the risk posed by the Goods and their contents shall pass to the Customer.

The Customer is obliged to accept the Goods and is responsible for their disassembly, removal, and collection.

The activity of the Customer or his vicarious agents at the location of the Goods shall be at his own risk. All applicable legal regulations and those of the landlord must be observed, instructions from ProdEq or the Seller, respectively, must be followed, and the site must be left clean and safe.

ProdEq and the Seller reserve the right to reject certain of the Customer's vicarious agents, to impose constraints or to mandate the contracting of specific riggers. If the latter is the case, the cost will be communicated to the Customer before the conclusion of the sales contract.

If, in connection with the removal of the Goods, works are required on buildings and structures, these shall, in the absence of other agreements, be borne by the Customer, including the restoration of the original condition.

The Customer shall provide ProdEq, without being requested to do so, with proof of the conclusion of a liability insurance with a coverage customary in the industry.

The Customer shall be liable for any damage incurred by ProdEq or third parties resulting from the activities of the Customer and its vicarious agents on the site.

In connection with exports, the Customer shall be responsible for clearing the Goods for export.

### b) If Shipment by the Seller has been agreed,

The Seller shall deliver the goods to the agreed place of destination in accordance with the agreed delivery terms / INCOTERMS.

The choice of means of transport and route of shipment is left to the Seller. Partial deliveries are allowed.

If a delivery period has been agreed, it shall commence on the day of the conclusion of the contract, but not before the Customer has provided all the documents, approvals, releases, and down payments required by the contract.

For EXW or FCA deliveries, a delivery date shall be deemed to have been met if notice of readiness for shipment has been given by the delivery date.

If the Seller is in default of delivery, the Customer may only assert the claims or rights to which it is entitled under these contractual terms or the law if it has set the Seller a reasonable grace period of at least 2 weeks in writing and the default in delivery still goes on at the expiry of the grace period.

Compliance with the delivery period shall be conditional upon the customer's fulfillment of its prior obligations.

Delivered Goods shall also be accepted if they arrive with damage or defects for the purpose of further clarification.

## 12. Transfer of Title

Title shall pass to the customer after complete fulfillment of the Customer's payment obligations pursuant to Art. 7 including any deposit pursuant to Art. 8.

If collection has been agreed, the complete fulfillment of the Customer's collection obligations pursuant to Art. 11 a) is an additional prerequisite for the transfer of title.

Until this point in time, a comprehensive extended retention of title shall apply based on the "Special Terms and Conditions concerning the Reservation of Title of ProdEq Trading GmbH".

## 13. Non-Fulfilment on the Part of the Customer

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If the Customer fails to fulfil its obligations under the sales agreement concluded with the Seller or fails to do so in time or in its entirety, the Seller shall be entitled, without prejudice to any other rights, either to insist on fulfillment or to pass from the claim for fulfillment to the claim for damages without setting a grace period.

In the event of default on the part of the Customer, the Seller may re-offer the Goods concerned on the market without granting a period of grace. The mere fact that the goods are re-offered by the Seller, however, does not constitute a waiver of fulfillment on the part of the parties.

If collection has been agreed and the customer exceeds the agreed collection date or if it becomes apparent that the date can no longer be met, the Seller is entitled, at its sole discretion and without granting a period of grace, either to sell the sold goods elsewhere or to store or keep them.

If storage or safekeeping is unreasonable under the given conditions or uneconomical in relation to the value of the goods, the Seller may scrap the goods.

The Customer shall be liable for all costs, expenses and lost earnings incurred, including currency loss and default interest at a rate of 4% p.a. above the current prime rate of the Swiss National Bank, as well as the costs of legal action. Proceeds from further sale or scrapping will be offset.

## 14. Cancellation, Termination of Contract

If the Seller becomes aware of circumstances that give rise to justified doubts about the performance of the contract by the Customer, the Seller may refuse to perform its obligations until the Customer provides the counter-performance or security. If the Customer fails to provide counter-performance or provide security within a reasonable period set by the Seller, the Seller may withdraw from the contract or terminate it. This shall also apply if the Seller has already performed its obligations in whole or in part.

Furthermore, the Seller may declare all claims arising from the business relationship due and payable, irrespective of previous deferrals or the term of any commitments to pay.

The Seller is also entitled to cancel the contract if:

- a) it turns out that the Goods are to be exported to a country or end-user to which the Goods may not be exported due to trade restrictions or embargoes of the country of dispatch or Switzerland.
- b) the handover or delivery has not yet taken place and it turns out that the goods / services will not be available in the foreseeable future.

In cases 14. a) and 14. b) the Seller shall inform the Customer immediately and refund the contract value without delay. ProdEq or the Seller, respectively, shall not be liable for any further damage.

## 15. Force Majeure

Force majeure, labor disputes, riots, regulatory action or other unforeseeable, unavoidable, or serious events shall release the parties from their performance obligations for the duration of the disruption and to the extent of its effect. This shall also apply if these events occur at a time when the affected contractual partner is in default. The contractual partners shall be obliged to provide the necessary information without delay within the scope of what is reasonable and to adjust their obligations to the changed circumstances in good faith.

## 16. Limitation of Liability

In case liability of ProdEq or the Seller, respectively, is considered, ProdEq or the Seller, respectively, shall only be liable insofar as it has caused the damage intentionally or through gross negligence or through culpable breach of ob-

ligations which make the proper execution of the agreement possible in the first place (cardinal obligations).

The total liability of ProdEq or the Seller, respectively, is limited to the value of the contract.

ProdEq or the Seller, respectively, shall not be liable for compensation of damage that has not occurred to the subject matter of the contract itself, such as e.g., loss of production, loss of use, loss of profit or other direct and indirect damage.

## 17. Venue and Applicable Law

The place of venue for all disputes arising directly or indirectly from the contract is St. Gallen (Switzerland). Ruling language is German. Swiss law shall apply exclusively. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

ProdEq or the Seller, respectively, are also entitled to take legal action at the registered office and under the jurisdiction of the Customer or the Seller.

## 18. Others

Amendments to the contract and other legal declarations between the Seller and the Customer must be made in text form. This also applies to a waiver of the text form requirement.

Should any part of a contract concluded between the Seller and the Customer be or become invalid or unenforceable, this shall not affect the validity of the remainder of the contract. The parties are then obliged to replace the ineffective part of the contract with an agreement that comes as close as possible to the economic purpose of the ineffective agreement.