

# General Terms and Conditions of Sale, Delivery and Payment

PTx Trimble GmbH<sup>1</sup>, Franz-Kleine-Strasse 18, 33154 Salzkotten, Germany  
(hereinafter referred to as "PTx Trimble")



PTx Trimble

duties incumbent on it, such as paying the purchase price. If this is not the case, the delivery period shall be reasonably extended. This shall not apply if the delay is attributable to PTx Trimble.

1. These Terms and Conditions of Sale, Delivery and Payment shall apply exclusively to the deliverables and services that we provide to entrepreneurs (Unternehmer), legal entities under public law (juristischen Personen des öffentlichen Rechts) and special funds under public law (öffentliche rechtliche Sondervermögen). All present and future legal relations between the ordering party, principal or buyer (hereinafter referred to as "Ordering Party") and PTx Trimble shall be governed by these Terms and Conditions of Sale, Delivery and Payment as amended from time to time. They shall also apply to all future deliverables, services or offers to the Ordering Party, even if they are not the subject of a separate agreement. Deviating terms and conditions of the Ordering Party are explicitly opposed. Terms and conditions of the Ordering Party shall not apply, even if PTx Trimble does not oppose their application in the individual case. Even if PTx Trimble refers to a letter that contains or refers to terms and conditions of the Ordering Party, such reference shall not be deemed agreement to the application of such terms and conditions.
2. Our Terms and Conditions of Sale shall apply solely to entrepreneurs (Unternehmer) as defined in Section 310 subsection 1 of the German Civil Code (BGB<sup>1</sup>).
3. **Offers**
1. Our offers are non-binding and, like all agreements between the Ordering Party and PTx Trimble, must be made in writing. The documents forming part of the offers, such as images, drawings, indications of weight and dimensions, shall only be approximately decisive unless they are expressly designated binding. They are not guaranteed quality features, but descriptions or designations of the deliverable or services. Variations that are customary in the trade and variations resulting from legal provisions or that constitute technical improvements and the replacement of components by parts of equivalent value shall be permitted, provided that they do not impede fitness for the purpose intended in the contract. PTx Trimble reserves right of ownership and copyrights in cost estimates, drawings and other documents; they may not be made accessible to third parties. This shall also apply to such written documents designated as "confidential". The Ordering Party may not forward them to any third party without our explicit prior approval.
2. If the order qualifies as an offer as defined in Section 145 of the German Civil Code (BGB), then we may accept it within 2 weeks.
3. The purchase agreement concluded in writing, including these General Terms and Conditions of Delivery, shall be exclusively decisive for the legal relations between PTx Trimble and the Ordering Party. It completely reproduces all agreements made between the contracting parties regarding the scope of the contract. Oral promises given by PTx Trimble prior to the conclusion of this agreement shall be legally non-binding and oral agreements made by the contracting parties shall be replaced by the written agreement unless they expressly show in each case that they are to remain binding.
4. Supplements and modifications of the agreements made, including these General Terms and Conditions of Delivery, must be made in writing to be effective. With the exception of Geschäftsführer<sup>2</sup> or Prokurensten<sup>3</sup>, the employees of PTx Trimble are not entitled to conclude any oral agreements deviating herefrom. Submission by means of telecommunications, including but not limited to, by telefax or by email, shall suffice to comply with the written form, provided that the copy of the signed declaration is submitted.

## III. Order Confirmation, Object of the Delivery and Services

For date, type and scope of the deliverables and services as well as the price, the written confirmation of order from PTx Trimble—if provided—shall be decisive. For the rest, the provisions of Section II shall apply.

## IV. Prices and Terms of Payment

1. Unless agreed separately, prices are ex works and do not include loading, packaging, transport and any potential insurance; such items shall be invoiced separately. Prices are exclusive of value added tax in the statutory amount as amended from time to time. Prices are quoted in euros, for export delivery plus customs duties and fees and other public charges. If the delivery and performance period exceeds four months and the materials and wage costs rise after conclusion of the contract, PTx Trimble is entitled to charge reasonable surcharges based on its initial price calculation for incurred cost increases. For small orders, i.e. orders for goods with a value of less than 35.00 €, we charge a handling fee in the amount of 10.00 €.
2. The purchase price shall be due without deduction immediately upon the Ordering Party's receipt of the invoice, unless another term of payment is stated in the order confirmation. Payment shall only be deemed effected if we are able to freely dispose of the amount. In the case of payments by cheque, payment shall not be deemed made until the cheque is cashed. The statutory provisions on the consequences of default in payment shall apply. Handing over a cheque shall not be deemed payment.
3. Deduction of early payment discounts must be agreed in writing.
4. PTx Trimble is entitled to execute or render any outstanding deliveries or services only against advance payment or provision of a security, if after conclusion of the contract it becomes aware of circumstances that are liable to essentially impede the Ordering Party's creditworthiness and to endanger payment of outstanding claims of PTx Trimble against the Ordering Party arising from the relevant contractual relationship (including other individual contracts governed by the same master agreement). The Ordering Party shall only have the right to withhold payments or to set-off its debt with counterclaims insofar as its counter-claims are undisputed or have been determined by final court judgment.
5. In the event of default in payment, PTx Trimble will charge interest in the amount of 9 percentage points above the base rate. PTx Trimble reserves the right to claim for loss and damage in excess of that amount.

## V. Period of Delivery and Performance

1. The times and deadlines stated by PTx Trimble are forecasts. Delivery periods and dates shall only be binding if PTx Trimble has explicitly confirmed them as definite delivery periods and dates in writing. It is a precondition of PTx Trimble's compliance with such times and dates that all commercial and technical questions between the contracting parties have been clarified and the Ordering Party has performed all

## VI. Passing of the Risk, Acceptance, Transport

1. The risk shall pass to the Ordering Party no later than when the object of the delivery or service is placed at its disposal on PTx Trimble's business premises, even if partial performances have been rendered or PTx Trimble has taken on other services, such as the despatch costs or transport and installation. If the goods must be accepted, such acceptance shall be decisive for the passing of the risk. It must be carried out immediately as at the date of acceptance, or alternatively after PTx Trimble's notification of the readiness for acceptance. The Ordering Party must not refuse acceptance due to the existence of a non-substantial defect. Upon the Ordering Party's wish, PTx Trimble shall insure the shipment against theft, breakage, transport damage, fire and water damage and any other insurable risks.
2. If despatch is delayed as a result of circumstances beyond PTx Trimble's control, the risk shall pass to the Ordering Party on the day of readiness for despatch; PTx Trimble shall however be obliged to have the insurances requested by the Ordering Party taken out at the Ordering Party's request and expense.
3. Delivered items must be received by the Ordering Party without prejudice to the rights stated in Section VIII even if they have non-substantial defects.
4. Partial deliveries shall be admissible to the extent that this may reasonably be expected of the Ordering Party.
5. The mode of shipment and the packaging are at the due discretion of PTx Trimble. Any transport aids that may be used are owned by PTx Trimble.
6. PTx Trimble must be notified of any transport damage immediately.

## VII. Reservation of Ownership

1. PTx Trimble reserves title to the object of delivery and services until all claims of PTx Trimble against the Ordering Party arising from the business relationship have been satisfied. If the Ordering Party acts in breach of contract, including but not limited to, by being in default of payment, PTx Trimble is entitled to withdraw from the contract and to recover the object of delivery and services and the Ordering Party is obliged to return them. Recovery and pledge of the deliverable by PTx Trimble shall only be deemed withdrawal from the contract if PTx Trimble explicitly declares such in writing.
2. Processing or transformation of goods subject to the reservation of title shall always be carried out by the Ordering Party on the behalf of PTx Trimble. If the item subject to reservation of title is processed or inseparably mixed with items not belonging to PTx Trimble, PTx Trimble shall acquire co-ownership in the new item in the proportion of the value of the item subject to reservation of title to the other processed or mixed items at the time of processing or mixing. If goods of PTx Trimble are consolidated with other movable items to a unified item or inseparably mixed and the other item must be regarded as the main item, it is hereby agreed that the Ordering Party shall transfer co-ownership proportionately, provided the main item belongs to the Ordering Party. The Ordering Party shall store the goods owned or co-owned by PTx Trimble. For the rest, for the item resulting from processing, transformation or transformation or consolidation or mixing, the same applies as for the goods subject to reservation.
3. PTx Trimble is entitled to insure the object of delivery and services against theft, breakage, fire, water damage and any other damage at the Ordering Party's expense, unless the Ordering Party itself has provably taken out such insurance.

4. Resale of the delivered goods, whether unprocessed or processed or consolidated or mixed, shall only be admissible for resellers in the ordinary course of business with reservation of title and only if the account receivable from the resale passes on to PTx Trimble. The Ordering Party is not permitted to effect pledges and secured transactions, nor to agree on a prohibition of assignment. If third parties attempt to encroach on rights of PTx Trimble, the Ordering Party must immediately inform PTx Trimble thereof.
5. The Ordering Party hereby assigns all receivables it is or will be entitled to from resale or any other legal ground involving the supplied goods in the amount of the value of the goods subject to reservation (invoiced amount) to PTx Trimble upon their creation. PTx Trimble hereby accepts the assignment.
6. The Ordering Party is authorized to collect the receivables arising from resale until revoked. Upon request, the Ordering Party must name to PTx Trimble the debtors of the assigned receivables, provide the information necessary to assert its claims against the debtors and hand over the documents, and inform the debtors of the assignment.
7. PTx Trimble undertakes to release the securities to the extent that their value exceeds the receivables to be secured by more than 20%, unless such receivables have already been settled.

#### **VIII. Warranty / Liability for Defects**

For material and legal defects of the deliverable or service which have been notified properly and in good time, PTx Trimble shall grant warranty to the exclusion of further claims subject to Section IX.:

1. All those deliverables or services turning out to be defective as result of circumstances existing prior to the passing of the risk must be subsequently improved or replaced at no charge by an item or service that is free of defect. Any detection of such defects must be reported to PTx Trimble immediately in writing. Replaced parts shall become the property of PTx Trimble.
2. The Ordering Party must grant the required time and opportunity, after consulting PTx Trimble to carry out all measures of subsequent improvement and of replacement deliveries considered by PTx Trimble to be necessary; otherwise, PTx Trimble shall be released from liability for the resulting consequences. Only in urgent cases of a threat to operating safety or to prevent disproportionately severe damage – in which case PTx Trimble must be informed thereof immediately - the Ordering Party shall have the right to remedy or have the defect remedied by third parties and to demand reimbursement for the necessary expenses from PTx Trimble.
3. Of the direct costs incurred for the subsequent improvement or replacement delivery performed by PTx Trimble, PTx Trimble shall bear the costs for the replacement including shipment, provided it transpires that the complaint is justified. Reasonable costs for disassembly and assembly shall be reimbursed according to the provisions of the law. This shall apply correspondingly to the cost of determining the cause of the defect.
4. For the rest, the claims of the Ordering Party against PTx Trimble as a whole or in respect of individual parts are limited to the right to subsequent fulfilment. Only if subsequent fulfilment has failed, may the Ordering Party reduce payment or withdraw from the contract.
5. If only a marginal defect exists, the Ordering Party shall be entitled only to reduce the contractually agreed price.

6. PTx Trimble does not assume any warranty in, including but not limited to, the following cases: unsuitable or improper use, faulty assembly, putting into operation and/or use - including faulty assembly, putting into operation and/or use not compliant with the state of the art - by the Ordering Party or third parties, usual wear and tear of the goods, faulty or negligent handling, improper maintenance, unsuitable utilities, defective construction works, unsuitable building land, unless PTx Trimble is responsible for them.

7. If the Ordering Party/Principal or a third party reworks improperly, PTx Trimble will not be liable for the resulting consequences. This shall also apply to a modification of the object of delivery and services carried out without PTx Trimble's prior approval.

8. If the object of delivery or services infringes industrial property rights or copyrights within Germany, PTx Trimble will, as a rule, provide the Ordering Party with the right to continued use, or modify the object of delivery or services in a way the Ordering Party can be reasonably expected to accept such that the property rights are no longer infringed. If it is not possible to do so at economically reasonable conditions or within a reasonable time limit, the Ordering Party shall be entitled to withdraw from the contract. Under the conditions mentioned, PTx Trimble shall also have the right to withdraw from the contract. Furthermore, PTx Trimble will hold the Ordering Party harmless against claims by the relevant holders of property rights that are undisputed or res judicata.

9. Subject to Section IX, in the case of an infringement of property rights or copyrights, the obligations of PTx Trimble stated in Section VIII.8 are exhaustive.

They shall exist, only if

- the Ordering Party immediately informs PTx Trimble of infringements of property rights or copyright in respect of which a claim has been raised,
- the Ordering Party supports PTx Trimble in the defence of the asserted claims to a reasonable extent or enables PTx Trimble to execute the modification measures according to Section VIII.8,
- PTx Trimble reserves the right to all defensive actions including any out-of-court settlements,
- the defect is not based on an instruction of the Ordering Party and
- the infringement of right has not been caused by the fact that the Ordering Party high-handedly modified the deliverable or used them contrary to the contract.

10. No warranty is given in respect of the sale of second hand goods. However, if PTx Trimble has repaired devices in full or in part as agreed, the following prerequisite shall additionally apply to the warranty: The warranty shall cover only those parts the renovation or repair of which was incumbent on PTx Trimble by contract.

11. The limitation period for all warranty claims shall be 12 months starting with the passing of risk.

#### **IX. Liability**

1. The right of the Ordering Party to demand compensation due to claims under strict liability, shall be limited to cases

- a) of intent, gross negligence on the part of PTx Trimble, its legal representatives or persons used to fulfil its obligations,
- b) of negligent breach of fundamental obligations under the contract (cardinal obligations),

- c) of fraudulent concealment of defects
- d) of assumption of a guarantee, of culpable injury to life, body, or health by PTx Trimble, its legal representatives or persons used to fulfil its obligations, or
- e) of a defect of the object of delivery or services where liability for personal injury or property damage to privately used objects applies pursuant to the German Product Liability Act (Produkthaftungsgesetz).

2. In the event of a negligent breach of fundamental obligations under the contract (cardinal obligations), the claim shall be limited to the amount of the foreseeable damage that might typically occur under such a contract.
3. Further claims for damages shall be excluded.
4. To the extent claims for damages against PTx Trimble, its persons used to fulfil its obligations or vicarious agents exist, they shall become statute-barred within one year starting on the commencement of the limitation period provided by law.
5. If PTx Trimble or its staff gives advice and information or makes a recommendation prior to, during or after the conclusion of a contract or in any other context, PTx Trimble shall only be liable for it if PTx Trimble has agreed and received separate remuneration for this and the advice, information or recommendation has been given in writing. In this case, PTx Trimble shall, if it was its fault, only be liable up to 25% of the agreed remuneration for the advice etc. This limitation of liability shall not apply in the cases in items 1 a), b), d) and e).
6. Any rights the Ordering Party might have under the provisions on the sales of consumer goods (Sections 474 to 479 of the German Civil Code - BGB) shall remain unaffected by the clauses above. Accordingly, in particular, but not limited to, the right of the Ordering Party to recourse against PTx Trimble due to a defect of a thing sold to a consumer pursuant to Section 478 of the German Civil Code (BGB) remains unaffected.

#### **X. Modification and Marking of Goods**

1. Modification of the object of delivery or services requires PTx Trimble's prior written approval.
2. Any change in the markings of the object of delivery or services, including but not limited to the serial or other control numbers and any special stamping that are regarded as indicative of the origin of the Ordering Party or of third parties and might create the impression that it is a special product are inadmissible.

#### **XI. Take Back / Return Shipments**

PTx Trimble is not obliged to take back goods delivered without defects (exchange). It is left to PTx Trimble's discretion whether the goods are taken back or not. A return shipment will only be accepted if PTx Trimble has given its prior written approval. This shall not apply to incomplete articles that are no longer completely new (such as opened packaging). A handling fee in the amount of 15% of the net value of the goods, but no less than 10.00 euros, will be charged for return shipments that we are not responsible for. The goods must be delivered carriage paid. In any case, a copy of the invoice or the delivery note must be enclosed with the return shipment. Without this copy, it is not possible to handle the return shipment.

#### **XII. Particularities in respect of Repair Orders out of Warranty**

PTx Trimble will execute repairs or reconditioning of delivered goods/installation out of warranty only against reimbursement of the costs. The standard local remuneration will be charged.

#### **XIII. Place of Performance, Place of Jurisdiction, Applicable Law**

1. The place of performance for all transactions which concern PTx Trimble shall be Salzkotten, Germany.
2. The place of jurisdiction for all disputes with merchants, legal entities under public law and special funds under public law shall be Paderborn, Germany. However, PTx Trimble is also entitled to bring an action at the Ordering Party's head office.
3. The laws of the Federal Republic of Germany shall apply to the exclusion of the United Nations Convention on the International Sale of Goods (CISG). This also applies to all contracts that are concluded in the course of the business relationship and do not contain any other legal arrangement in writing.

#### **XIV. Sanctions & Trade Controls, Anti-Bribery**

1. When reselling and/or transferring the purchased item to third parties, as well as when providing services in connection with the purchased item, the Ordering Party must comply with all national, European, foreign and international foreign trade regulations and laws (in particular economic and financial sanctions and embargoes as well as export control regulations) that apply to the purchased item or its resale / transfer (hereinafter referred to as "foreign trade regulations"). This also applies to foreign trade regulations of third countries outside the EU, in particular the USA, which are applicable to the transfer of the purchased item under the law of the third country, insofar as this does not result in a violation of national or EU law (e.g. in accordance with Section 7 AWV in conjunction with Section 4 AWG or Regulation (EC) 2271/96).
2. Before transferring the purchased item to third parties or providing services in connection with the purchased item, the Ordering Party shall in particular check and ensure by appropriate measures that
  - 2.1 such transfer to third parties or provision of services does not violate any embargo regulations of the European Union – also taking into account any restrictions on domestic transactions and any circumvention prohibitions – (regardless of the applicability of these regulations to the Ordering Party or the business transaction) in particular, purchased items from PTx Trimble that are listed in the annexes to Regulation (EU) No. 833/2014 or Regulation (EU) No. 765/2006 and are subject to an export ban are not transferred or exported, directly or indirectly, to persons in Russia or Belarus or for use in Russia or Belarus;
  - 2.2 intellectual property rights, trade secrets or other confidential information granted or transferred by PTx Trimble shall not be used in connection with goods listed in the annexes to Regulation (EU) No. 833/2014 or Regulation (EU) No. 765/2006 that are subject to an export ban to Russia or Belarus, respectively, if these goods are intended, directly or indirectly, for sale, delivery, transfer or export to Russia or Belarus or for use in Russia or Belarus; Belarus, if these goods are intended, directly or indirectly, for sale, delivery, transfer or export to Russia or Belarus or for use in these countries;
  - 2.3 the object of purchase is not intended for prohibited or licence-requiring military, nuclear or weapons-related use, unless any necessary licences have been obtained;
3. The Ordering Party assures that, at the time of conclusion of the contract, it is not listed on any sanctions lists published by the United Nations, the European Union or any of its member states, the U.S. Bureau of

Industry and Security (BIS), the U.S. Office of Foreign Assets Controls (OFAC) or the United Kingdom. Furthermore, the Ordering Party assures to the best of its knowledge that it is not directly or indirectly owned (50% or more) or controlled by persons, companies or organisations that are included in any of the sanction lists mentioned in sentence 1. The Ordering Party shall immediately inform the seller of any changes (in particular changes in the ownership and control structure under company law) that affect these confirmations. The representations and confirmations set out in this clause XIV shall only be obtained by the Ordering Party and provided to PTx Trimble to the extent permitted by the applicable anti-boycott rules of the EU and German law (see Section 7 AWV in conjunction with Section 4 AWG and Regulation (EC) 2271/96).

- 4 If required for the performance of export control checks by authorities or by PTx Trimble, the Ordering Party shall, upon request, immediately provide PTx Trimble with all information and documents relevant to the export control check, in particular regarding the end recipient, the final destination and the intended use of the purchased item or the services provided by the Ordering Party in connection with the purchased item.
- 5 A breach of paragraphs 1 to 3 constitutes a material breach of contract and entitles PTx Trimble to terminate the contractual relationship with immediate effect. The Ordering Party shall indemnify PTx Trimble in full against all claims asserted against PTx Trimble by authorities or other third parties due to the Ordering Party's culpable failure to comply with the obligations described in paragraphs 1 to 3 and undertakes to compensate PTx Trimble for all damages and expenses incurred by PTx Trimble in this connection.
- 6 The Ordering Party acknowledges that it is fully aware of and shall comply with all applicable anti-bribery and anti-corruption laws, including but not limited to the U.S. Foreign Corrupt Practices Act (FCPA) and any other relevant anti-corruption legislation applicable to its business activities. The Ordering Party.

7 The Ordering Party shall not, directly or indirectly, offer, pay, promise, grant, authorize, or accept any gift, fund or payment of any amount or object of value to or from any public or government official with the purpose of influencing an official act or decision of said official.

8 The Ordering Party declares and guarantees that none of its members, directors, executives, and employees carry out any work as a public official or government employee and, in this act, undertakes to immediately notify PTx Trimble, giving it full knowledge of the matter in case any of its partners, officials, directors and/or employees maintain any activity in the condition of public or government official.

#### XV. Miscellaneous

1. Subsidiary agreements, amendments and/or supplements must be made in writing. This also applies to a waiver of the requirement for the written form.

2. In the event that a provision of these Terms and Conditions or any other agreement within the scope of any other agreements is or becomes ineffective, the effectiveness of the remaining provisions shall not be affected. In lieu of the ineffective provision, such an effective provision shall be deemed agreed that corresponds as closely as possible to the provision intended by the parties. This shall also apply in the event of a gap.

<sup>1</sup> Translator's note: A GmbH is a limited company under German law as a general partner <sup>2</sup> BGB-Bürgerliches Gesetzbuch

<sup>3</sup> Translator's note: here: plural, no equivalent, similar to a director <sup>4</sup> Translator's note: here: plural, no equivalent, person holding power of attorney <sup>5</sup> Translator's note: Aktiengesellschaft, a joint stock corporation under German law