

PDV Terms and Conditions for Sale and Agency Services

PDV-Systeme GmbH (PDV),
Dörntener Strasse 2 A,
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1. General Provisions

- a) These Terms and Conditions for Sale and Agency Services apply to the extent that PDV refers to them in its contractual documents (quotes, order confirmations, service descriptions, statements of work or contracts). Should these Terms and Conditions for Sale and Agency Services come into conflict with any other contractual documents concluded between you and PDV, the latter shall take precedence.
- b) If these Terms and Conditions for Sale and Agency Services are applicable, your general terms and conditions, including general terms and conditions of purchase and delivery, do not apply. Said terms and conditions do not apply even if you refer to them in other contractual documents, for example, in an order or purchase order, and PDV does not expressly object to their applicability or PDV performs services in such cases without reservation and in knowledge of your general terms and conditions or general terms and conditions of purchase and delivery.
- c) These Terms and Conditions for Sale and Agency Services do not apply to the provision of services or work performed directly by PDV itself. In such cases, PDV's Service and Solutions Terms and Conditions apply. These Terms and Conditions for Sale and Agency Services apply only to the sale of hardware and software by third-party providers ("manufacturers"), the licensing thereof, or the arrangement of manufacturer services by PDV.

2. Deliverables

- a) The deliverables are specified expressly and exhaustively in the contractual documents. PDV is not obliged to provide any services beyond this. This applies in particular to the selection of products and advisory services, application engineering, installation and demonstration of successful installation, initial set-up, instruction, training and consultation. These can be requested additionally and will be paid for separately.
- b) Should anything be unclear, especially with regard to the deliverables, or should you require deliverables beyond those specified, please be sure to ask PDV before you conclude the contract or place an order.

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- c) On the basis of these Terms and Conditions for Sale and Agency Services, PDV sells, arranges and licenses products provided by manufacturers. The properties that the products must feature, including durability, functionality and compatibility, together with the authorization for use in the operational environment, are set out in the relevant product description and the manufacturer's operating instructions. The rights of use to be granted and associated rules and regulations are set out in the relevant manufacturer's terms and conditions, in particular the licensing agreement. It is your responsibility to familiarize yourself with the relevant information on the product or service to be provided in order to fulfill the contract, the authorized operational environment, the rights of use to be granted and the associated rules and regulations before you conclude the contract. If anything is unclear or you do not have adequate information, you should seek advice and information from PDV employees or competent third parties.
- d) User guides (user documentation or online support) are provided only where they have been devised by the manufacturer or if they are required for the intended use. We can provide you with operating and installation instructions in electronic form, unless it is unreasonable to expect you to receive them in this manner. Any additional instructions and accessories will be delivered only in cases where this has been specifically agreed, such as in a parts list.
- e) If PDV arranges a service for you, you will conclude a contract directly with the manufacturer, which in turn is responsible for the service to be provided. In this case, PDV's performance obligation is limited to the proper arrangement of the service.
- f) PDV undertakes to provide the services properly and is responsible for providing the services that it is contractually obliged to provide. To this end, PDV employs a certified quality management system (in accordance with DIN EN ISO 9001) for the scope of application "Trade in products and provision of services related to the IT infrastructure of data centers" and a certified information security management system (in accordance with ISO / IEC 27001) for the scope of application "Provision of managed services."
- g) PDV technical staff are not authorized to make contractual amendments or supplements. This is reserved exclusively for the management of PDV, its authorized signatories (*Prokuristen*) or general agents, as well as its sales department.

3. Cooperation

- a) The attainment of your objectives under the contract concluded with PDV depends on the effective cooperation of all parties involved. Your assistance and that of any service providers you hire play a decisive role in the success of our working relationship. Therefore, the parties to the contract have a mutual obligation to provide each other with the information, data and documents they require in order to perform the contract in an organized manner if and when requested to do so, and to provide access, including remote access, to the systems that fall under the scope of the contract.
- b) It is your responsibility to provide, either yourself or via a service provider of your choice, what is expedient for the provision of services by PDV, but does not constitute the contractually agreed deliverables to be provided by PDV. Unless otherwise expressly agreed in the contractual documents, this means that you are responsible in financial and operational terms for the procurement and operation of additional hardware, software, materials, tools, third-party services and other resources required in order to provide the services. To this end, you are required to work with PDV's own qualified employees and contacts and to ensure that the necessary system requirements are met in order to achieve and maintain the smooth functioning of the systems, and, in particular, establish and maintain the operating and application conditions specified by the manufacturer.
- c) In particular, you are required to continuously monitor the systems covered by the contract, to report any defects to PDV without undue delay, to take the advice provided by PDV concerning the analysis of the problem into account, to an extent that can be reasonably expected, and to forward to PDV any information available to you that is necessary to remedy the defect. This applies in particular to error messages to ensure PDV has the best possible support when troubleshooting.
- d) It is PDV's recommendation, and your responsibility, to maintain a test system, or have a test system maintained, in order to check, in particular, recommended changes and troubleshooting procedures, so that any undesired effects of planned changes in the live system can be anticipated and averted as far as possible.
- e) It is PDV's recommendation, and your responsibility, to ensure that proper contingency planning is in place for the components covered by the contract (such as hardware and software), and that this planning adequately reflects the nature and significance of the components.

- f) You are required to use the products solely in accordance with any applicable laws and regulations, and in particular with the respective manufacturer's operating, usage and license conditions.
- g) You are responsible for checking and complying with the applicable import and export regulations for the deliveries or services.
- h) Provisions containing more specific details in this regard, especially those governing responsibilities and system requirements, are reserved for the other contractual documents, in particular the service descriptions.
- i) You are obliged to contact PDV before concluding a contract or placing an order if you have any doubts about your or a third party's ability to estimate or provide the supplies and cooperation required.

4. Data Backups

Unless otherwise agreed, you are responsible for ensuring that your data is backed up properly and that your current data from data sets stored in machine-readable form can be reproduced with a minimal and reasonable amount of effort at all times.

5. Delivery, Other Place of Performance

- a) Deliveries are made ex warehouse, which also constitutes the place of performance for the delivery and any subsequent performance. The goods can be delivered to a different destination at your request and expense (sale by delivery to a place other than the place of performance). Unless otherwise agreed, PDV is entitled to select the type of shipment (in particular the shipping company, route and packaging).
- b) Partial deliveries are permissible provided that, after taking all the circumstances into account, you can reasonably be expected to accept said deliveries.
- c) Insofar as it is not necessary for additional services to be performed on your premises, PDV may freely choose the place of performance and is in particular entitled to provide services remotely.

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- d) PDV arranges for the delivery of software that has been sold or licensed at its own discretion: You will either receive a program copy of the software on a machine-readable data storage medium, or the software will be made available to you in a retrievable form and you will be provided with the corresponding license key.

6. Obligation to Inspect and Give Notice of Defects

You are obliged to verify that the products are complete and in proper working order (including all documentation) without undue delay after they have been handed over to you. You are obliged to notify PDV of any defects without undue delay, in text form where possible and, if this can be reasonably expected, in a manner comprehensible to PDV (obligation to inspect and give notice of defects). Defects that only become apparent at a later date are covered by No. 15 (d). If the obligation to inspect and give notice of defects is not met, delivery will be deemed to have been approved with respect to the corresponding defect.

7. Transfer of Risk

- a) The risk of accidental loss and accidental deterioration of the goods transfers to you when the goods are handed over to you. In the case of sale by delivery to a place other than the place of performance, the risk of accidental loss and accidental deterioration of the goods, as well as the risk of delay, is transferred to you as soon as the goods are handed over to the shipping company, carrier or other natural or legal person appointed to execute the shipment.
- b) If the shipment is delayed through no fault of our own, the goods will be stored at your expense and risk; in such case, notification of readiness for shipment is equivalent to shipment.
- c) If software is provided in a retrievable form, the risk is transferred to you upon notification that it is ready for download.

8. List of Prices, Costs and Expenses, Cross-Border Deliveries and Services

- a) Fees and prices are set out in the contractual documents (quotes, order confirmations, service descriptions, statements of work or contracts) and cover only the services expressly specified therein. Any additional services commissioned will be charged in addition based on the time and effort incurred. Unless otherwise agreed, the provisions on travel expenses set out in the attached PDV list of prices apply, together with the provisions on hourly rates and travel times in the event of reimbursement based on the time and effort incurred.
- b) Unless otherwise agreed, prices are ex warehouse. Unless otherwise agreed, you are responsible for all costs incurred in connection with the provision of the services, such as transport costs, taxes, charges, customs duties and payment transaction fees. Any expenses, travel and accommodation costs incurred are to be reimbursed by you as they arise and to a reasonable extent.
- c) Unless otherwise agreed, you undertake to initiate and complete all legal or official procedures in respect of cross-border deliveries or services in a timely manner and at your own responsibility, and in particular to provide PDV with all necessary import and export documentation, including documentation required for the recognition of tax exemptions.

9. Retention of Title and Rights

- a) Title to hardware, including any accompanying documentation, and rights of use with respect to software (including operating software) is not transferred to you until the invoiced amount for such items has been paid in full.
- b) Where rights of use are granted before the invoiced amount has been paid in full, these may be revoked at any time.

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10. Subcontractors and Reservation of Self-Supply

- a) Unless otherwise agreed, PDV is entitled to engage subcontractors to fulfill its performance obligations. Notwithstanding the above, PDV remains directly responsible and liable to you in respect of the fulfillment of its contractually agreed performance obligations.
- b) Both PDV and you are entitled to withdraw from the contract in the event that PDV has concluded a matching hedging transaction and, through no fault of its own, is not supplied by its supplier.

11. Force Majeure

PDV is not responsible for delays or failures to perform its services caused by force majeure (“force majeure”), which includes, in particular, war, embargoes and sanctions, acts of terrorism, sabotage, natural disasters, power failures, strikes, lockouts, official orders, general disruptions to telecommunications or similar events, as well as epidemics, pandemics, quarantine restrictions or other restrictions resulting from measures imposed by public health authorities, and/or circumstances within your control, and is entitled to postpone the provision of the affected service accordingly, including an appropriate lead time.

12. Acceptance of Deliverables

- a) If the services to be performed by PDV constitute deliverables requiring acceptance, the acceptance of the deliverables must be provided without delay, however, by no later than seven calendar days after delivery (“review period”).
- b) PDV is entitled to attend every acceptance, partial acceptance or performance of acceptance tests.
- c) Deliverables will be deemed to have been accepted if no defects preventing acceptance have been reported within the review period or if they have been used productively for a significant period of time after delivery.

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13. Right of Offset and Retention

- a) You may only assert rights of retention or offset undisputed, legally established claims or claims that have reached a stage permitting a decision.
- b) Your counterclaims are excluded from the above contractual exclusion of set-off and the exclusion of the assertion of rights of retention based on the non-contractual and/or incomplete provision of the respective contractual service by PDV.

14. Manufacturer's Warranty

- a) If the manufacturer of the products provides a warranty, this will establish an independent legal relationship between you and the manufacturer, which will apply in parallel to the warranty for defects.
- b) To safeguard the claims arising from such warranty, you are required to assert them vis-à-vis the manufacturer directly and fulfill the manufacturer's warranty conditions.
- c) You are obliged to inform PDV about the assertion of warranty claims and how the manufacturer handles them.

15. Material Defects and Defects of Title

- a) A material defect is deemed to exist if the products fail to possess the agreed properties (see in particular No. 2, Deliverables) or cannot be used for the contractually agreed purpose. As a third party, the manufacturer is entitled to intellectual property rights in the software. A defect of title is deemed to exist if it was not possible to effectively grant you the rights you require to use the software as contractually intended.
- b) You are not entitled to claims for defects if you have
modified the products, or
had them modified by third parties, or

used them in combination with products other than those specified,

except where you can prove that the defect already existed at the time of delivery. Should PDV's analysis and processing expenses increase significantly in such cases, you are obliged to reimburse the additional costs incurred.

- c) Claims for defective products (inclusive of documentation) become time-barred one year after delivery, unless they are claims based on injury to life, limb or health or on intent or gross negligence.
- d) You undertake to report any defects that may become known and arise, in text form where possible, and without undue delay after they have been detected. You should document the defects for PDV in as comprehensible a manner as possible.
- e) In the event of a notification of a defect, PDV will provide subsequent performance free of charge within a reasonable timeframe and in accordance with the following provisions.

PDV may choose to effect subsequent performance either by remedying the defect or by delivering a new item. You are entitled to demand a specific type of supplementary performance if you cannot reasonably be expected to accept the other form of supplementary performance. If third-party rights are infringed, PDV may, at its own discretion, rectify the situation by acquiring a right of use that is sufficient for the purposes of the contract for your benefit, or by modifying the software that breaches the property rights without any effects, or only with acceptable effects for you in terms of its functionality, or replace the software that infringes the property rights with software that can be used in accordance with the contract without infringing any property rights, or supply a new version of the program that can be used in accordance with the contract without infringing any third-party property rights.

PDV may also rectify the defect by providing you with instructions by telephone, in writing or by e-mail.

PDV assumes the expenses incurred for the purpose of subsequent performance, including transport, travel, labor and material costs.

If it transpires that the notification of a defect was unfounded, PDV is entitled to claim compensation for the costs incurred, insofar as you have, at the very least, acted negligently.

- f) If subsequent performance is unsuccessful and you have set a reasonable time limit that allows at least two attempts at rectification, you may, at your discretion, withdraw from the contract or reduce the payment. The supplementary performance is not deemed to have been definitively unsuccessful after the second unsuccessful attempt at rectification; rather, PDV may choose the number of attempts at supplementary performance during the specified period, insofar as you can reasonably be expected to accept this.
- g) You do not have to set a deadline if you cannot reasonably be expected to do so, in particular if PDV has firmly and definitively refused to provide subsequent performance.
- h) Furthermore, if PDV is at fault, you may claim compensation in lieu of performance or reimbursement of expenses.
- i) The right to withdraw from the contract and the right to claim compensation in lieu of full performance apply only in the case of material defects.
- j) In the event of a justified withdrawal from the contract, PDV is entitled to demand reasonable compensation for the use of the products up to the point of withdrawal.
- k) If PDV has fraudulently concealed a defect or has itself assumed a warranty for the properties of a product or service, the statutory provisions regarding material defects and defects of title and their limitation periods remain unaffected.

16. Liability

- a) The liability of the parties is unlimited in accordance with statutory provisions for loss or damage resulting from injury to life, limb or health, or for loss or damage resulting from intent or gross negligence, as well as for loss or damage that falls within the scope of protection of a warranty provided, and to the extent that the scope of application of the Act on Liability for Defective Products is established.
- b) Where loss or damage other than that mentioned in the previous paragraph is due to a simple negligent breach of material contractual obligations (referred to as cardinal obligations), the liability of the parties is limited to compensation for a typical contractual foreseeable loss or damage. Material contractual obligations within the meaning referred to above are obligations where the breach of which

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jeopardizes the attainment of the purpose of the contract, the fulfillment of which is a prerequisite for the proper performance of the contract, and the observance of which the other party generally relies on.

- c) In all other respects, any further liability for loss or damage other than that set out in 16 (a) above and arising from a simple negligent breach of obligations other than those set out in 16 (b) above is excluded, irrespective of the basis in law.
- d) The limitations and exclusions of liability set out above also apply in respect of the personal liability of the parties' employees, agents, legal representatives and management bodies.

17. Confidentiality

As with PDV, you are obliged to maintain secrecy with respect to all confidential information that you receive in connection with the contractual relationship. As with PDV and its employees, you may only use this information for the purpose of performing the contract and ensure that your employees are also bound by this. This notwithstanding, you are entitled, to the same extent as PDV, to refer to the contractual relationship to an appropriate extent.

18. Data Privacy and Information Security

- a) You and PDV agree to comply with the relevant provisions, including but not limited to the General Data Protection Regulation (GDPR), when handling personal data, and to refrain from the unauthorized processing of personal data, and to ensure that your employees also comply with these provisions.
- b) Where necessary, the contracting parties agree to conclude an agreement on commissioned processing in accordance with Article 28 GDPR or a contract for data processing as joint controllers in accordance with Article 26 GDPR.
- c) PDV is obliged to ensure organizational, physical and operational information security within its area of responsibility. PDV ensures compliance with information security standards and requirements that, at a minimum, conform to ISO 27001 (in its most up-to-date version) with appropriate consideration given to the standards of the German Federal Office for Information Security (BSI).

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19. Place of Jurisdiction and Applicable Law

- a) The exclusive place of jurisdiction is Goslar, Germany. However, PDV is also entitled, at its discretion, to take legal action against you at your usual place of jurisdiction.
- b) The laws of Germany apply exclusively, with the exception of standards relating to a different legal system; the application of the UN Sales Convention (CISG) is expressly excluded.

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