

General Terms and Conditions (GTC) of Primion Technology GmbH (Primion)

A. General provisions

§ 1 - Scope of application

1. The following GTC apply exclusively; deviating or supplementary terms and conditions, in particular contractual penalty provisions of the contracting party, shall not become part of the contract unless Primion has expressly confirmed their validity. The current version of the GTC also applies to all future agreements with the contracting party.
2. These GTC only apply to entrepreneurs, legal entities under public law and special funds under public law within the meaning of Section 310 (1) BGB.

§ 2 - Conclusion of contract, content of service, written form

1. Order forms signed by the contracting party are to be understood as an offer by the contracting party, unless it is apparent in individual cases, for example through mutual signature, that the immediate conclusion of the contract has been agreed. Primion can accept such an offer within 4 weeks.
2. The service content owed results conclusively from the written order confirmation from Primion or, in the case of immediate conclusion of the contract (Clause 1), from the respective contract form. Unless expressly agreed otherwise, for example in a consulting contract, the contractual partner is solely responsible for the selection and suitability of the delivery and service.
3. All agreements as well as any subsequent supplementary or deviating additional agreements require the express confirmation of Primion in order to be effective. Offers made by Primion itself are subject to change and are only valid for a reasonable period of time specified in the offer.

§ 3 - Terms of payment, remuneration, offsetting, right of retention

1. Prices quoted by Primion do not include delivery and transportation costs and are subject to the applicable statutory VAT. All services provided by Primion are due for payment immediately and without deduction. Payment deadlines stated in invoices are not considered due dates.
2. Default of payment occurs in particular if the contracting party does not pay within two weeks of the due date and receipt of the invoice. In the event of late payment, Primion is entitled to charge interest on arrears at a rate of 9 percentage points above the base interest rate. This does not exclude the assertion of further damages.
3. Primion is entitled to refuse all services arising from the business relationship or to provide them only against advance payment as long as the contracting party is in arrears with its payment obligations. The contracting party is only entitled to offset or withhold payment if its counterclaim is undisputed or has been legally established.
4. If Primion is obliged to provide advance performance, the service can be refused – without default

occurring – if circumstances become apparent after the conclusion of the contract that allow the conclusion that the contracting party cannot fulfil its consideration, in particular its payment obligation. In this case, Primion is entitled to set a reasonable deadline within which the contracting party must pay concurrently with the provision of the service or provide security. After unsuccessful expiry of the deadline, Primion may withdraw from the contract and demand compensation damages incurred or futile expenses.

§ 4 - Deliveries, deadlines, reservation of delivery, handover protocol

1. Deliveries are made ex works, i.e. at the expense and risk of the contractual partner. This is both the place of performance for the delivery and the place for any subsequent performance. If agreed, Primion will out transport insurance at the expense of the contracting party.
2. Delivery and performance times are set out in Primion's order confirmation or, in the case of immediate conclusion of contract (§ 2 clause 1), in the respective contract form. Unless otherwise agreed, the dates stated are "approximate deadlines". The final deadlines will be announced by Primion with a reasonable period of notice. Primion is entitled to provide partial deliveries and services; any claims of the contractual partner due to performance disruptions are not affected by this.
3. All performance obligations of Primion are subject to timely and correct self-delivery. Primion is entitled to postpone the delivery or service - without default occurring - for the duration of the resulting hindrance in the event of late or incorrect self-delivery through no fault of Primion and in the event of other hindrances for which Primion is not responsible.
4. If agreed, Primion will connect hardware ready for operation or install functional software. Operational readiness or functionality can demonstrated by the trouble-free running of test programs or a test run. The contracting party must then confirm the operational readiness or functionality by signing a handover protocol.
5. Operating instructions can be provided in digital form.

§ 5 - Retention of title

1. Ownership of the subject matter of the contract shall remain reserved until full payment of all existing and future claims of Primion arising from the business relationship . The resale, pledging, transfer by way of security or other disposal of the contractual object by the contractual partner is not permitted as long as the retention of title exists.
2. The contractual partner is obliged to treat items subject to retention of title with care. This includes, in particular, insuring these items against theft, damage and destruction at its own expense and regularly carrying out the necessary service work. The Contracting Party hereby assigns all claims arising from the insurance contract to Primion. Primion is entitled to demand the submission of proof of the existence of the insurance cover.
3. The contracting party must inform Primion immediately in writing of any damage, seizure, application for the opening of insolvency proceedings or other interference with items owned by Primion. In the event of the seizure of an item owned by Primion, the contracting party must indicate Primion's ownership and bear all costs of recovery, including legal costs, insofar as these cannot recovered from the third party.

4. The contracting party may demand the release of securities if the realizable value of the securities exceeds the outstanding claims by more than 20%; Primion is entitled to select the securities to be released.
5. Any processing or transformation of the goods subject to retention of title by the buyer shall always be carried out on our behalf. If the reserved goods are processed with other items that do not belong to us, we shall acquire co-ownership of the new item in the ratio of the value of the reserved goods (final invoice amount including VAT) to the other processed items at the time of processing. In all other respects, the same shall apply to the new item created by processing as to the goods subject to retention of title.

If the reserved goods are inseparably combined or mixed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the reserved goods (final invoice amount including VAT) to the other combined or mixed items at the time of combination or mixing. If the goods subject to retention of title are combined or mixed in such a way that the Buyer's item is to be regarded as the main item, the Buyer and we hereby agree that the Buyer shall transfer co-ownership of this item to us on a pro rata basis. We accept this transfer. The sole ownership or co-ownership of an item created in this way shall be held by the buyer for us.

§ 6 - Ancillary and cooperation obligations of the contractual partner

1. Within its area of responsibility, the contracting party must ensure that Primion is able to deliver the contractually owed service, in particular the hardware and software to be provided, to the designated rooms on the announced dates and connect them ready for operation or install them in a functional manner and provide services without hindrance. Primion must be notified in writing in advance of any recognizable obstacles to performance (company vacations, etc.) within a reasonable period of time.
2. In particular, the contractual partner shall be obliged to comply with the following conditions in order to maintain claims for performance and defects:
 - a) Connection/installation requirements
 - Designation and provision of the personnel required to support the connection/installation work;
 - Enabling a test run or the execution of the test programs under the usual operating conditions and granting the necessary computing times.
 - b) Data maintenance
 - Regular data backups, especially before carrying service work, to minimize the risk of data loss.
 - c) General conditions for service
 - Appointment of a qualified contact person and a deputy;
 - Immediate reporting and detailed description of any faults that occur using appropriate documentation (error logs, etc.);
 - If remote diagnostics are agreed, the necessary infrastructure (telephone connection, etc.) must be set up and maintained at the customer's own expense.

§ 7 - Take-back and disposal of electrical appliances

Primion fulfils its obligation as a manufacturer to take back old appliances and dispose of them properly in accordance with the provisions of the ElektroG. The Primion repair and return delivery guidelines, which are available for download on the Primion homepage, apply to the bearing of costs for the take-back.

§ 8 - Default

1. In the event of default, the contracting party may set Primion a reasonable grace period with the declaration that it will withdraw from the contract in whole or in part or claim damages for non-performance after this period has expired.
2. If the contracting party claims damages for non-performance, Primion's payment obligation is limited to 8% of the value of the delayed service in accordance with the contract.

§ 9 - Defect rights (in particular purchase), withdrawal

1. Obvious defects must be reported to Primion in writing to within 5 working days of delivery, handover or acceptance in order to maintain the warranty rights, hidden defects occurring within the limitation period must be reported within 5 working days of discovery.
2. The limitation period for defects in newly manufactured items is 1 year from delivery or acceptance.
3. If a defect occurs within the limitation period, Primion may, at its discretion, deliver a replacement or remedy the defect within a reasonable period of time. If the replacement delivery or rectification fails within a reasonable period or is unreasonable, the contracting party is entitled to reduce the purchase price, withdraw from the contract or demand compensation for non-performance, whereby Primion's liability is limited to 1.5 times the purchase price of the defective item.
4. The warranty rights are excluded if a defect is to improper operation, improper use or handling of the hardware or software or a change or modification of the hardware or software provided that has not been approved by Primion.
5. Service times are not considered downtimes unless the service measure is based on the defectiveness of the subject matter of the contract for which Primion is responsible (e.g. faulty maintenance measures, installation of updates, etc.).
6. The contracting party's right of withdrawal is excluded if Primion is not responsible for the circumstance justifying the withdrawal.

§ 10 - Overall liability of Primion

1. In the event of simple negligence - regardless of the legal grounds - the liability of Primion, its bodies, employees and vicarious agents for damages that are not typical of the contract or unforeseeable is excluded and otherwise limited to the extent of damages that Primion could typically expect at the time of conclusion of the contract due to the circumstances known to it at that time. Primion is not liable for indirect damages, consequential damages and loss of profit.
2. Liability for data loss is limited to the restoration costs that would have been incurred if data had been

backed up regularly and in accordance with the risks involved.

3. Notwithstanding other liability provisions in these General Terms and Conditions, Primion shall in no case be liable for an amount exceeding EUR 100,000.00 per claim.
4. Liability in excess of the maximum liability amounts contained in these General Terms and Conditions can only be assumed on the basis of a separate written agreement.
5. The above and the other limitations of liability contained in these General Terms and Conditions do not apply in the event of intent or gross negligence or in the event of culpable injury to life, limb or health, for liability claims under the Product Liability Act and in the event of a contractually agreed, no-fault obligation (guarantee).

§ 11 - Confidentiality, data protection

1. The contracting parties undertake to keep confidential for an unlimited period of time all information and data which become accessible to them in the course of the business relationship and which are designated as confidential or are recognizable as confidential due to other circumstances, in particular as business or trade secrets, and - unless necessary to achieve the purpose of the contract - neither to record them nor to pass them on to third parties or to exploit them in any way. Employees and third parties engaged shall be obligated in this sense.
2. In order to protect personal data, Primion will observe the relevant provisions on data protection, in particular obliging the persons employed by it in the fulfilment of the contract to data secrecy within the meaning of § 53 BDSG.

§ 12 - Place of jurisdiction, export control

1. The place of jurisdiction for all disputes arising from the business relationship shall be Stetten am kalten Markt. The right of both parties to assert claims against the contractual partner at its general place of jurisdiction shall remain unaffected.
2. In the event that the subject matter of the contract is exported, the contractual partner is responsible for compliance with the relevant provisions, in particular the Foreign Trade Act and any applicable US export control regulations. German law applies exclusively to all agreements between Primion and a customer, excluding the UN Convention on Contracts for the International Sale of Goods.

B. Additional special provisions for the provision of software

§1 - Software transfer, rights of use, source codes

1. Primion grants the contracting party a non-exclusive and non-transferable, simple right of use to the software provided within the scope of the following provisions. This right is limited if a term has been agreed or - if no term has been agreed - unlimited in time and is subject to full payment of the software. The scope of the right of use for software from other manufacturers ("third-party software") is determined primarily by the terms of use of the respective manufacturer in the event of its inclusion.

2. The contractual partner is entitled to use the software on the hardware available to it within the scope of the contractual and statutory provisions. Simultaneous use on more than one piece of hardware or in a network (simultaneous multiple use) requires a separate agreement - insofar as the multiple use is outside the intended use. In the event of a change of (operating) hardware, the software on the previously used hardware must be deleted.
3. The transfer or disclosure of the source code of the software is not owed. There is no obligation on the part of Primion to further develop the software provided. The contracting party is not entitled to modify, edit or reproduce the software provided in any form without the consent of Primion, unless this is necessary for the intended use (§ 69d of the German Copyright Act - UrhG). Decompilation is only permitted in accordance with the provisions of § 69e UrhG.
4. The contractual partner is not entitled to transfer its right of use to third parties or to grant them corresponding rights of use (sublicenses).
5. The above provisions apply accordingly to user and operating documentation provided with the product. Primion is entitled to provide documentation in electronic form and in German or English.
6. In the event of a breach of contract, in particular of the above provisions or the applicable export control regulations, Primion is entitled, among other things, to demand an injunction and, if necessary, the surrender or destruction of unlawfully produced copies, as well as compensation for damages. The right of Primion to terminate the right of use with immediate effect or to withdraw from the contract remains unaffected.

§ 2 - Property rights

1. Primion guarantees that no third-party rights are infringed by the transfer and use of the software in the Federal Republic of Germany. Primion accepts no liability for infringements of third-party software
2. If claims are asserted against the contracting party by a third party arising from or in connection with an alleged infringement for which Primion is responsible, Primion must be informed immediately. The contracting party undertakes not to recognize any infringement of rights against the third party and to leave any dispute with the third party, whether in or out of court, exclusively to Primion or to conduct it in consultation with Primion.
3. At Primion's request, the Contracting Party shall immediately cease using the software. Primion is entitled to provide the Contracting Party with different or modified software that essentially corresponds to the agreed performance characteristics. For the duration of any resulting impairment of use, the contracting party is exempt from paying the rental fee or the purchase price will be reduced accordingly.
4. Primion will also take all appropriate and necessary measures to defend the contracting party against the claims made. In the event of a proven or recognized infringement of rights by Primion, Primion will indemnify the contracting party against any necessary expenses, damages and other payment claims by third parties up to a maximum amount of EUR 100,000.
5. The contracting party will support Primion in the defence of the existing property rights to the software in its favour. The contracting party shall inform Primion immediately of any infringements of property rights of which it becomes aware.

C. Additional special provisions for projects (installations)

§ 1 - Acceptance

1. The contractual partner is obliged to accept contractual services. Acceptance cannot be refused due to insignificant defects. Upon request, the contractual partner must confirm acceptance in writing.
2. Acceptance shall be deemed to have taken place in accordance with the statutory provisions if the contractual partner does not assert at least one defect after setting a deadline.

§ 2 - Warranty rights

1. The limitation period for defects in services rendered is 1 year from the start of the statutory limitation period.
2. If a defect occurs within the limitation period, the Contracting Party may demand that the defect be rectified within a reasonable period of time. If the rectification fails or is unreasonable, the Contracting Party is entitled to reduce the remuneration, withdraw from the contract or demand compensation for non-performance, whereby Primion's liability is limited to 1.5 times the agreed remuneration in the case of an individual order and to the respective annual service fee in the case of ongoing service contracts.

§ 3 - Terms of payment

At the time of commissioning, 30% of the total order amount is due immediately as an advance payment for the material orders to be placed as part of the project as well as planning or other advance services. Up to a residual amount of 10% of the total order amount, we shall issue partial invoices for partial services or deliveries in accordance with the statutory provisions (§ 632a BGB/§ 16 VOB) at our discretion according to the progress of the project. The remaining amount of the total contract sum is due upon completion of the project with the final invoice. Different payment terms may be agreed in individual cases.

D. Reference to further General Terms and Conditions of Primion

1. The General Terms and Conditions of Maintenance of Primion apply in addition to the agreements regarding maintenance and repair as well as troubleshooting of hardware and software.
2. The General Terms and Conditions for "Primion Cloud Services" also apply to agreements regarding cloud services.
3. For orders or other purchasing agreements, including but not limited to purchase, work or service contracts with suppliers, Primion's General Terms and Conditions of Purchase shall apply in addition.
4. The General Terms and Conditions of Primion and the supplementary General Terms and Conditions of Primion referred to in this section are available for download on the Primion website.

E. Information in accordance with the Consumer Dispute Resolution Act

Primion is not willing or obliged to participate in dispute resolution proceedings before a consumer arbitration board within the meaning of the German Consumer Dispute Resolution Act (Verbraucherstreitbeilegungsgesetz).