

General Terms and Conditions
(also referred to as the T&Cs) for the company PRESTO GmbH & Co. KG
(last updated: 10/2023)

I. Scope, form

1. These General Terms and Conditions (T&Cs) shall apply to all business relationships between PRESTO GmbH & Co. KG (PRESTO) and its customers ("Customers") with respect to the manufacturing, delivery and assembly of machines and systems. They shall also apply if PRESTO is furthermore responsible for the planning and/or commissioning of the machines or systems. The T&Cs shall only apply if the customer is a company in the sense of Sec. 14 BGB (German Civil Code), a legal entity under public law, or a public law special fund.
2. These T&Cs shall also apply to future contracts of the same kind with the customer, unless otherwise agreed. No express reference to the applicability of the T&Cs is required.
3. These T&Cs shall apply exclusively. Any deviating, contrary or supplementary General Terms and Conditions of the customer shall only be considered part of the contract if PRESTO has expressly agreed to their validity. This approval requirement shall apply in every case, including if PRESTO completes a delivery to the customer without reservation, with awareness of the customer's T&Cs.
4. Any individual agreements concluded in an individual case shall take precedence over these T&Cs. Unless proven otherwise, a written contract or the written confirmation from PRESTO shall be decisive when determining the contents of such agreements.
5. Legally valid declarations and notifications from the customer in relation to the contract (such as terms, defect notifications, withdrawals or reductions) must be submitted in writing, e.g. in written or text form (for instance by letter, email, or fax). Statutory formal requirements and further verification requirements shall remain unaffected, in particular in case of doubt regarding the legitimation of the declaring party.
6. Any references to applicable statutory regulations are provided only for clarification. Therefore, the statutory regulations apply even without such clarifications, unless they are directly amended or expressly excluded in these T&Cs.

II. Offers, prices and delivery reservation

1. Offers are non-binding, unless otherwise indicated in the offer letter. This is the case even if PRESTO has provided the customer with catalogues, technical documentation (such as drawings, plans, calculations, references to DIN standards), other product descriptions or files – including in electronic form – to which PRESTO reserves rights of ownership and copyrights.
2. Offer prices stated by PRESTO are net prices without a discount. Statutory VAT must be added. Transportation and packaging costs, transportation insurance and agreed additional services shall be charged separately.

3. If the time between when the contract is concluded and the agreed delivery deadline is more than four months, PRESTO is entitled to pass on increases in the costs used to calculate the price, namely increases in raw material or energy prices, wages, salaries, freight and taxes, to the customer.

4. An order placed for goods or other services shall be considered a binding contractual offer from the customer. If not otherwise indicated in the order, PRESTO is entitled to accept this contractual order within 2 weeks after its receipt by PRESTO.

III. Specification / customer specifications

1. The customer shall provide exact specifications for their inquiry before the offer is submitted. The specifications shall include properties, in particular weights, dimensions, performance data and all other characteristics of the object. The properties must be stated so that the object will be suitable for the customer's intended use.

2. PRESTO is not obligated to review information provided by the customer to ensure feasibility or suitability of any kind.

3. PRESTO shall bear no liability if the contractual object is not used for the purposes intended based on the characteristics provided, regardless of whether the object is suitable for the purpose of the customer or not.

4. If the customer/purchaser requests that certain materials or resources be used, PRESTO is not responsible for these requested materials or resources. Any liability for these or for any defects resulting from the use of these materials or resources is excluded.

IV. Delivery term and default

1. The term for completing the contractual services shall be individually agreed in each case. If this is not the case, PRESTO shall perform the services within a reasonable time period, determined at its own discretion (Sec. 315 BGB). Intermediate deadlines for parts or agreed services or preparatory work (such as planning services or production of building or machinery parts) shall not apply unless otherwise agreed in an individual case.

2. If PRESTO cannot comply with binding deadlines for completing contractual services for reasons for which it is not responsible, PRESTO shall inform the customer of this promptly and at the same time indicate the expected new completion date. If PRESTO is still not able to complete the service within this new deadline, PRESTO is entitled to withdraw from the contract in whole or in part; PRESTO will promptly reimburse any payment already made by the customer.

Reasons in the sense of clause 1 include, in particular, late deliveries by PRESTO's own suppliers, if PRESTO has concluded hedging transactions, if neither PRESTO nor the supplier are culpable, or if PRESTO is not obligated to complete a purchase in an individual case.

3. PRESTO shall be deemed in default of delivery in accordance with statutory regulations. However, a warning notice from the customer is required for this in every case.

4. The rights of the customer according to XI of these T&Cs and the statutory rights of PRESTO, in particular if its performance obligations are excluded (for instance because the services and/or supplementary performance are impossible or unreasonable), shall remain unaffected.

V. Delivery, transfer of risk, acceptance, default of acceptance

1. Deliveries shall be completed from the production facility or, if already stored, from the warehouse. This is also considered the place of fulfilment for the delivery and any supplementary performance. At the request and cost of the customer, goods shall be shipped to another destination (sale by delivery to a place other than the place of performance - *Versendungskauf*). If not otherwise agreed, PRESTO is entitled to determine the type of shipment itself (in particular the transportation company, shipping route, packaging).

2. The customer or building owner shall obtain any permits necessary for the installation and operation of systems to be delivered by PRESTO from the responsible authorities at their own cost, for the entire scope of delivery and for any necessary installation. The customer shall bear the costs of official approvals and permits. PRESTO is not obligated to review this.

3. If goods are delivered abroad, the customer shall handle any import formalities and pay all import fees (such as customs duties) and other costs resulting from the import. Import or foreign currency restrictions of the international country shall not affect the validity of the contract with the customer. If this makes it impossible for the customer to complete acceptance or if the customer denies acceptance because of this, they must reimburse PRESTO for any resulting damages.

4. If not otherwise agreed, PRESTO is entitled to complete partial deliveries. This applies in particular to deliveries of primary components of a machine without any parts also necessary for installation and connection, as well as software agreed for the commissioning. There shall be no right to complete partial deliveries if this would be unreasonable for the customer, for instance because proper storage and protection of the delivered parts until the machine is assembled would be impossible.

5. The risk of accidental destruction and deterioration of the goods shall be transferred to the customer at the latest at the time of handover. In the case of sale by delivery to a place other than the place of performance (Sections 650, 447 BGB), however, the risk of accidental destruction and deterioration of goods and the risk of default shall be transferred already at the time the goods are delivered to the freight forwarder, the delivery company or other entity charged with completing the shipment. If acceptance has been agreed, this is decisive for determining the transfer of risk. The statutory regulations covering contracts for work shall otherwise apply accordingly for agreed acceptance. If the customer is in default of acceptance, this shall be considered equivalent to a handover or acceptance.

6. The customer is obligated to promptly inspect the delivered goods. Any complaints regarding defects must be submitted to PRESTO promptly, with the type and scope of the defects specified and a description of individual defects, in written or text form; otherwise, the goods/works delivered by PRESTO shall be considered as conforming in full to the contract.

7. If the customer falls into default of acceptance, if they do not complete any required contribution, or if PRESTO's delivery is delayed for other reasons for which the customer is responsible, then PRESTO is entitled to request reimbursement of resulting damages, including additional expenses (such as storage costs).

VI. Transportation insurance, transportation damage

PRESTO is entitled, but not obligated to conclude a transportation insurance policy at the cost of the customer. The value of the goods shall be used as the basis for determining the sum insured. Reimbursement claims for objects damaged or lost during transportation must be asserted directly with the delivery company by the customer (railway, bus or freight forwarder). The customer must record any damage in transit immediately after receiving the shipment, observed by two neutral witnesses, then provide written notification of such damage to the delivery company. Original waybills, proof of liability and regulatory authority must be provided to PRESTO for the purpose of any negotiations with the transportation insurance company. Damage in transit or lost delivered objects shall not free the customer from their payment obligations towards PRESTO.

VII. Setup, commissioning and installation

1. If PRESTO accepts an order to complete installation, the installation shall be billed based on the hours worked and PRESTO's hourly rates. The tariff surcharges shall apply for overtime hours and work on Sundays and holidays. Travel time shall be compensated in full in addition to transport costs as transit time. The customer shall also pay lodging costs and per diem rates. Installation does not include bricklayer, carpenter, roofer or electrician work, nor the provision of scaffolding, lifting devices or crane trucks.

2. PRESTO is entitled to hire contracted fitters and subcontractors to complete installation work. If installation is impossible or delayed for reasons for which the customer is responsible, then installation and travel time, as well as other costs, shall be charged in the amount incurred at the daily rates.

3. Installation work must be accepted upon completion. PRESTO shall provide written notice of completion to the customer. The formal acceptance shall be completed at the acceptance deadline indicated in PRESTO's notification that work is complete. If the customer does not show up for the appointment, or if the customer does not indicate another acceptance deadline to PRESTO at the latest within 5 business days of the original date, then the work shall be considered in accordance with the contract and accepted in full.

VIII. Withdrawal and securities

1. If the customer goes into bankruptcy before the delivery of the ordered goods, or if bankruptcy proceedings are opened against their assets, or not opened due to a lack of funds, then PRESTO is entitled to withdraw from the contract or make fulfilment of the contract dependent on secured payment of the purchase price.
2. If events occur for which PRESTO is not responsible (such as force majeure, mobilisation, war, unrest, transportation delays, operational disruptions, late delivery of materials by its own suppliers, lockouts or strikes) which have a significant impact on PRESTO, then PRESTO shall be entitled to withdraw from the contract in whole or in part or request an extension of delivery terms from the customer by the length of these events. In such cases, any claims for damages by the customer shall be excluded.

IX. Invoices, due dates and payments

1. Invoices must be paid to PRESTO at the latest 14 days after the invoice date, without deductions. This does not include installation costs, which are payable immediately after receiving the invoice.
2. The date on which funds are credited to PRESTO's account is decisive for determining if payments are made on time.
3. All claims against the customer are due immediately if the payment conditions are not complied with, or if PRESTO becomes aware of circumstances that could significantly reduce the credit-worthiness of the customer. In these cases, PRESTO is also entitled to complete any outstanding deliveries only in return for a security, regardless of any further statutory rights, or to withdraw from the contract after a reasonable grace period, or to assert damages due to non-fulfilment. PRESTO is entitled to offset its claims against any claims of the customer, regardless of the legal grounds.
4. PRESTO shall accept checks only in lieu of fulfilment. Any retention of ownership for reserved goods shall expire only when payment of the check is completed, according to the specific provisions on the retention of ownership in these terms and conditions.
5. If payments are challenged or completed later than agreed, PRESTO is entitled to charge interest in the statutory amount from the date our claims are due. We reserve the right to assert further default damages.
6. PRESTO's sales representatives and other employees are not entitled collect debts.

X. Retention of ownership

1. PRESTO reserves ownership to the delivered objects (good) until complete payment is made for all current and future claims of PRESTO arising from the contract and the ongoing business relationship (secured claims).

2. Goods subject to a retention of ownership may not be pledged to third parties or transferred as a security until full payment of the secured claims is completed. The customer shall notify PRESTO promptly and in writing if a motion is made to open insolvency proceedings or if third parties access goods belonging to PRESTO in any other manner (such as through seizure).

3. If the customer acts in a manner violating the contract, in particular by not paying due compensation, PRESTO is entitled to withdraw from the contract in accordance with the law and/or demand the return of goods based on its retention of ownership. The demand to return goods shall not be considered a declaration of withdrawal; instead, PRESTO is entitled to only demand the goods and reserve the right of withdrawal. If the customer does not pay the compensation owed, PRESTO may only assert these rights if they have first provided the customer a reasonable grace period for payment without success, or if such a grace period is not required by law.

4. The customer is entitled, until revocation according to (c) below, to sell and/or process the goods subject to a retention of ownership in the normal course of business. In this case, the following provisions shall also apply.

(a) The retention of ownership shall apply to goods produced by processing, mixing, or combining goods from PRESTO in full, whereby PRESTO shall be considered the manufacturer. If third party ownership rights are retained after processing, mixing, or combining the goods with third party goods, then PRESTO shall obtain co-ownership to the processed, mixed or combined goods based on their invoiced value. Otherwise, the same regulations shall apply for the goods produced as for goods delivered under a retention of ownership.

(b) The customer hereby already assigns any claims against third parties resulting from the resale of the goods or products to PRESTO by way of security in full, or in the amount of the respective co-ownership of PRESTO according to the above paragraph. PRESTO hereby accepts the assignment. The obligations of the customer set forth in para. 2 shall also apply with respect to the assigned claims.

(c) The customer shall remain entitled to collect the claims, in addition to PRESTO. PRESTO hereby undertakes to not collect the claims if the customer fulfils its payment obligations to PRESTO, if there are no defects in its performance capabilities, and if PRESTO does not assert the retention of ownership by exercising a right according to para. 3. If this is the case, however, PRESTO can request that the customer notifies PRESTO of the assigned claims and their debtors, provides all information necessary for collection, submits associated documents, and informs the debtors (third parties) of the assignment. In addition, in this case PRESTO is entitled to revoke the customer's authority to sell and process goods subject to a retention of ownership.

(d) If the collectible value of the securities exceeds PRESTO's claims by more than 10%, PRESTO shall release the securities at its discretion at the request of the customer.

XI. Guarantee/liability/defect claims

PRESTO shall be liable for material defects and defects of title, excluding further claims, and conditional on Sec. 8 as follows:

1. Material defects

(a) All parts found to be defective due to circumstances which occurred after the transfer of risk shall be repaired or replaced with non-defective parts at the discretion of PRESTO. PRESTO must be notified promptly and in writing when such defects are found. Replaced parts shall be considered the property of PRESTO.

(b) The customer must provide PRESTO with the time and opportunity necessary to complete all repair work and replacement delivery which PRESTO deems necessary; otherwise, PRESTO shall be released from liability for any resulting consequences.

The customer is only entitled to correct defects itself or have them corrected by a third party and request reimbursement from PRESTO for necessary expenses only in urgent cases where operational safety is endangered, or to avoid unreasonably high damages. PRESTO must be informed immediately in this case.

(c) PRESTO shall bear the costs necessary to complete supplementary performance – if the complaint proves legitimate – insofar as this is not an unreasonable burden for PRESTO.

(d) The customer is entitled to withdraw from the contract in accordance with the law if PRESTO misses a reasonable deadline set for supplementary performance or replacement delivery due to a material defect – in consideration of exceptions set forth by law. If the defect is not significant, the customer shall only be entitled to reduce the contractual price. Otherwise, any right to reduce the contractual price shall be excluded.

(e) Further claims shall be determined exclusively according to clause XII. of these conditions.

(f) No liability shall be accepted, in particular, in the following cases: Unsuitable or improper use, incorrect installation completed by the customer or incorrect commissioning by the customer or third parties, natural wear and tear, incorrect or negligent handling, improper maintenance, improper operating materials, defective construction work, improper substrate, chemical, electro-chemical or electrical influences for which PRESTO is not responsible.

(g) If the customer or a third party completes improper improvements, PRESTO shall not be liable for any resulting consequences. The same applies for any modifications to the delivered object carried out without the prior approval of the supplier.

(h) If PRESTO completes an inspection of the delivered object in response to a defect complaint by the customer and finds that the complaint was unjustified, for instance because the asserted error does not exist or was caused by one of the circumstances listed in para. (F), then PRESTO can demand reimbursement of costs incurred for the inspection from the customer.

If PRESTO carries out work to correct an error at the request of the customer after informing the customer that the complaint was unjustified, PRESTO can demand appropriate compensation for this at its own discretion (Sec. 315 BGB), in consideration of costs incurred, with reasonable surcharges for general costs of business, risk and profit.

2. Defects of title

(a) If use of the delivered object violates industrial property rights or copyrights within Germany, PRESTO shall generally obtain the right for the customer to continue using the goods at its own cost, or modify the delivered object in a manner reasonable for the customer so that it no longer violates the industrial property rights. If this is not possible at reasonable economic conditions or within a reasonable time period, the customer is entitled to withdraw from the contract. PRESTO shall also be entitled to withdraw from the contract under these requirements. Furthermore, PRESTO shall release the customer from claims by the holder of such rights that are undisputed or have been established in a court of law.

(b) PRESTO's obligations as set forth in paragraph (a) are conclusive for violations of property rights or copyrights, conditional on Sec. 8 (2). They shall exist only if

- the customer promptly informs PRESTO of asserted violations of property rights or copyrights,
- the customer supports PRESTO to a reasonable extent in defending against the assert claims, or makes it possible for PRESTO to complete modifications according to paragraph (2) (a),
- PRESTO reserves all defences, including extra-judicial regulations,
- the defect of title was not the result of an instruction from the customer, and
- the legal violation was not caused by unauthorised modifications completed by the customer in a manner that violated the contract.

XII. Other liability

1. If not otherwise indicated in these T&Cs, including the following provisions, PRESTO shall be liable in accordance with the law for violations of contractual and extra-contractual obligations.

2. PRESTO shall be liable for claims for damages in accordance with its fault-based liability for intentional actions and gross negligence, regardless of the legal grounds. In cases of simple negligence, PRESTO shall be liable, conditional on statutory liability instructions (such as due diligence in its own matters; insignificant breach of duty) only

a) for damages resulting from injuries to life, body or health,

b) for damages resulting from violations of a significant contractual obligation (obligation which must be fulfilled for proper fulfilment of the contract and which the contractual partner should regularly be able to trust will be fulfilled); however, in this case PRESTO's liability shall be limited to reimbursement of foreseeable, typical damages.

3. The liability restrictions resulting from para. 2 shall also apply towards third parties and in case of breaches of duty by personnel (including to their benefit) for whose culpability PRESTO is liable according to the law. They shall not apply if a defect was intentionally concealed or if a guarantee was provided for the characteristics of the goods, or for claims by the customer according to the Product Liability Act.

4. The customer can only withdraw from or terminate the contract due to a breach of duty which is not a defect if PRESTO is responsible for the breach of duty. Any free right of termination for the customer (in particular according to Sections 650, 648 BGB) shall be excluded. Otherwise, the statutory requirements and legal consequences shall apply.

XIII. Limitation period

1. In deviation from Sec. 438 para. 1 no. 3 BGB, the general limitation period for claims resulting from material defects and defects of title shall be one year from delivery, if installation and/or commissioning are not agreed. If installation is agreed, the term shall begin at the end of installation. If acceptance is agreed, the term shall begin upon acceptance.

2. The above limitation periods shall also apply to contractual and extra-contractual claims for damages by the customer that are based on a defect in the goods, unless applying the regular statutory limitation period (Sections 195, 199 BGB) would result in a shorter limitation period in an individual case. Claims for damages by the customer according to Sec. 8 para. 2 clause 1 and clause 2(a) and according to the Product Liability Act shall expire exclusively in accordance with the law.

3. If the goods are a structure or used for a structure based on their customary usage and this caused the deficiency, then the limitation period shall be 3 years from the time of delivery. Any further special statutory regulations on limitation periods shall remain unaffected (in particular Sec. 438 para. 1 no. 1, para. 3, Sections 444, 445 b BGB).

XIV. Offsetting

Only claims that are undisputed or have been established in a court of law may be offset against PRESTO's claims.

XV. Assignment

The customer may not assign any of its rights and obligations in conjunction with deliveries in whole or in part without the prior written approval of PRESTO. PRESTO is permitted to assign its rights and obligations in conjunction with deliveries, in particular to affiliated companies in the sense of Sec. 15 AktG (Joint Stock Corporation Act).

XVI. Software usage

1. If software is included in the scope of delivery, the customer shall be granted a non-exclusive right to use the delivered software and its documentation; this right cannot be sub-licensed.
2. The delivered software shall be provided to the customer for use on the delivered object intended for this purpose. Using the software on more than one system is prohibited.
3. The customer may duplicate, revise, or translate the software, or convert the software from object code to source code, only to the extent permitted by law (Sections 69a et seqq. UrhG (Copyright Act)). The customer hereby undertakes to not remove any manufacturer information, in particular trademarks, copyright or other protected right notifications, without the express prior approval of the supplier.
4. PRESTO or the software supplier shall retain all other rights to the software and documentation, including copies. Lending, leasing or otherwise temporarily providing the software to third parties, as well as sub-licensing, are not permitted.

XVII. Choice of law and place of jurisdiction

1. The law of the Federal Republic of Germany applies to these T&Cs and the contractual relationship between PRESTO and the customer, excluding international uniform law, in particular UN Sales Law.
2. If the customer is a merchant in the sense of the German Commercial Code, legal entity under public law or public law special fund, then the exclusive place of jurisdiction for all disputes arising directly or indirectly from this contractual relationship, including internationally, shall be Osnabrück. PRESTO is also entitled in all cases to file suit at the place of fulfilment for the service obligation according to these T&Cs, or any individual agreement which takes precedence, or at the general place of jurisdiction for the customer. Any statutory regulations which take precedence, in particular regarding exclusive places of jurisdiction, shall remain unaffected.

XVIII. Severability clause

If a provision of these contractual conditions is or becomes invalid, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced by an effective regulation coming as close as possible to the meaning and purpose of the invalid provision. Any loopholes shall be closed through a supplementary contractual interpretation.