**GENERAL CONDITIONS OF SALE PTP**

**DEFINITIONS**

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| **Customer** | The party with which PTP contracts; |
| **Service(s):** | Services that PTP provides to Customer, including assembly, modification, installation, configuration, storage, etc. of Products; |
| **Offer:** | Every proposal made by PTP to Customer related to the delivery of Products and/or Services; |
| **Agreement:** | Every agreement between PTP and Customer for the delivery of Products and/or Services; |
| **Product(s):** | The (components of) goods that PTP provides to Customer, including, for instance, servers, storage, memory, processors, graphic cards, hard discs, SSD, care packs, hard drives, licenses, guarantees; |
| **PTP:** | PTP IT Distribution B.V. (private limited company) with its registered office in Tiel and registered with the Chamber of Commerce under number 01111152 and all companies directly and indirectly affiliated with it; |
| **RMA Conditions:** | The Return Material Authorisation terms of PTP (click *here* for the RMA Conditions); |
| **Conditions:** | These general terms and conditions. |

**ARTICLE 1: GENERAL**

* 1. These Conditions apply to any Offer, Agreement, and the ensuing obligations arising between PTP and Customer, and to any separate delivery of a Product and/or Service.
	2. The applicability of any terms and conditions of the Customer is expressly excluded. Changes to or derogations from these Conditions must be explicitly agreed on in writing.
	3. In the event of a conflict between these Conditions and provisions of the Agreement, RMA Conditions and/or any agreed changes or derogations, the provisions of the Agreement, RMA Conditions and/or the agreed changes or derogations shall prevail.
	4. PTP is authorized to unilaterally change all or part of these Terms at any time. PTP will inform Customer of these changes. If the Customer considers the changes unacceptable, it must notify PTP in writing within 5 calendar days. If Customer fails to do so, it shall be deemed to have irrevocably accepted the new Conditions.
	5. In the event of nullity or voidability of one or more provisions of these Conditions, the invalid provision will be replaced by a provision that resembles the content of the invalid or voidable provision as closely as possible, and the other provisions will continue to apply in full.
	6. Whenever these Conditions refer to "in writing” or “written”, this shall include e-mail or other messages sent by analog or digital communication.
	7. In case of any conflict between the Dutch text of these Terms and Conditions and translations thereof, the Dutch text shall prevail. This also applies to the RMA Conditions.

**ARTICLE 2: (FORMATION OF) THE AGREEMENT**

* 1. Any Offer is without obligation. Unless expressly stated otherwise, Offers are valid for a maximum of 24 hours after the moment on which the Offer is issued.
	2. Previous Offers and/or quotations to Customer are considered to have been withdrawn after the issuing of a new offer and/or quotation to the same Customer.
	3. PTP is authorized at all times (including immediately after acceptance) to withdraw an Offer issued and/or to terminate negotiations with the Customer. PTP is not obliged to compensate the costs and/or damages incurred by the Customer as a result.
	4. An Agreement is concluded at the moment that PTP accepts the order in writing or at the moment that PTP starts the performance of the Agreement.
	5. Customer checks the configuration offered by PTP as included in the Offer and the order confirmation. It is the responsibility of Customer to assess whether the configuration offered by PTP matches the purpose and/or design for which the Products are intended/used. PTP does not verify this.
	6. If the Products are unavailable at its regular suppliers during the period after the Offer is made or after the Agreement is concluded, PTP has the right to (partially) terminate the Agreement. PTP is never obliged to compensate any damage suffered by Customer as a result.
	7. Every Offer and/or Agreement is based on information provided by Customer. Customer must provide all requested information upon PTP's first request. Furthermore, Customer is obliged to communicate all changed information and circumstances to PTP in writing as soon as possible so that PTP can duly take them into account in (the performance of) the Agreement and/or Offer. In the absence of the aforementioned notification, PTP reserves the right to terminate the Agreement (in whole or in part) and/or to suspend its execution.
	8. Customer guarantees the accuracy and completeness of the information it provides. PTP has no obligation to check the information for accuracy and completeness. Deviations in the Product and/or Services resulting from incorrect and/or incomplete information provided by Customer do not constitute a failure of performance by PTP.
	9. (Increased) costs and/or damage resulting from the fact that Customer does not comply with its obligation to provide information under Article 2.7 and 2.8 are wholly at the expense and risk of Customer and must be compensated to PTP by Customer.
	10. Customer acknowledges that adjustments to (the content of) the Agreement may affect the delivery period. If adjustment of (the content of) the Agreement is the result of Customer's requests or actions or other circumstances attributable to the Customer, PTP has the right to charge any additional work resulting from this as an additional or separate order in accordance with its usual rates.

**ARTICLE 3: PRICE AND PAYMENT**

1. Unless otherwise indicated, the rates and prices applied by PTP are:
	1. based on the level of purchase rates, production costs, material costs, wages, taxes, and other costs on the offer date;
	2. exclusive of costs, including VAT, import and export taxes, bank charges or other similar taxes and costs.
2. PTP has the right to pass on any price increase of cost-increasing factors which arose during the period after the Offer was made or after the Agreement was concluded to the Customer in full. The foregoing also applies if the increase is a result of a foreseeable circumstance. If the Customer believes the increase to be unacceptable, it must inform PTP of this in writing within 5 calendar days. If Customer fails to do so, it shall be deemed to have irrevocably accepted the new prices.
3. Customer must pay in Euros. Should PTP and Customer have agreed on prices in a currency other than Euro and that other currency decreases in value in relation to the Euro after the conclusion of an Agreement, PTP is entitled to adjust the prices to compensate for the decrease in value.
4. If the Offer and/or Agreement includes costs related to transportation, packaging and/or insurance, these costs are an estimate. PTP will pass on any differences between the estimated costs in the Offer and the actual costs to Customer.
5. Payments must be made in accordance with the method specified by the Agreement or prescribed by PTP.
6. PTP applies a payment term of 30 calendar days after the invoice date, unless otherwise is agreed on. This payment term is final. On expiry of the payment term, Customer is in default by operation of law and owes PTP statutory commercial interest and extrajudicial collection costs. Customer reimburses to PTP all (actual legal) costs, irrespective of their nature or type, related to PTP's collection of the outstanding amounts.
7. Payments made by Customer first serve to pay the interest and costs referred to by the Customer in the previous paragraph and are then deducted from the longest outstanding claim.
8. Customer is not entitled to offset amounts owed to PTP against any amount owed to Customer by PTP.
9. Customer is not entitled to suspend payment of any amount owed to PTP.

**ARTICLE 4: PERFORMANCE OF THE AGREEMENT**

1. PTP makes every effort to perform the Agreement to the best of its knowledge and ability but provides no guarantees about achieving an intended and/or desired result.
2. PTP only delivers the Products and/or Services as explicitly specified in the Agreement. PTP does not accept any liability for not delivering Products and/or Services other than those specified in the Agreement.
3. PTP is entitled to make partial deliveries and invoice Customer separately.
4. The delivery times indicated by PTP are based on the market circumstances at the time of the Offer. The delivery period starts after PTP confirms this to the Customer in writing.
5. Although PTP shall make every effort to meet an agreed delivery date, the delivery dates stated are not final. Customer acknowledges that PTP is dependent on its suppliers and/or third parties to meet the delivery time. In the event of late delivery, Customer must send a written notice of default to PTP and give PTP a reasonable period of time for fulfillment.
6. If a delay in the delivery period occurs due to an act attributable to Customer, PTP is entitled to a reasonable extension of the delivery period, which shall not be less than the duration of the delay. Examples of such acts of Customer include the failure of approval of an Offer, a request for changes to the Agreement or a carrier being not available for the delivery of Products. All costs resulting from this delay will be charged by PTP to Customer and must be paid by Customer.
7. Furthermore, PTP is entitled to a reasonable extension of the delivery period in case PTP is prevented from meeting its obligations due to force majeure as referred to in Article 9. PTP is always entitled to an extension equal to the period that the force majeure situation continues.
8. Failure to meet the delivery date does not entitle Customer to full or partial termination of the Agreement or to compensation of any damage suffered by Customer, unless in the event of intent or gross negligence on the part of PTP. The limitations of liability in Article 8 apply.

**ARTICLE 5: DELIVERY, RISKS AND RETENTION OF TITLE**

1. All agreed on terms of delivery for Products shall be interpreted in accordance with the most recent version of Incoterms.
2. Unless otherwise agreed, the following terms of delivery apply:
	1. within the European Union; Delivery Duty Paid (DDP);
	2. to the United Kingdom and Switzerland: Delivery At Place (DAP);
	3. outside the European Union; Ex Works (EXW).
3. The risk of the Product delivered will pass permanently to Customer upon arrival at the place of delivery.
4. If a Product turns out not to be available and/or deliverable after the Agreement is concluded, PTP has the right to deliver a similar Product to Customer. Any increased costs incurred as a result will be charged to Customer by PTP and must be paid by Customer. If a similar Product does not exist or is not available, PTP has the right to terminate the Agreement.
5. The Product remains the property of PTP until all financial obligations have been met by Customer. These financial obligations include payment of the principal due under the Agreement, claims for attributable failure and/or damages, extrajudicial collection costs, interest, and penalties.
6. Customer is obliged to label and keep separate all delivered Products until the moment of transfer of ownership. Any products in the Customer's possession that are identical to the Products are deemed to be the property of PTP, subject to counter-evidence.
7. The retention of title does not affect the passing of risk under Article 5.3.
8. Customer may only use the Product subject to retention of title in the course of its regular business activities. Customer may not dispose of the Product or encumber it with security or other limited rights in rem.
9. Customer shall cooperate fully with PTP to protect PTP's title to ownership. Customer shall immediately inform PTP in writing if third parties claim ownership rights or other rights to the Product.
10. If Customer fails to meet its payment obligation for a period of more than 30 calendar days, PTP is authorized to revindicate the Product subject to retention of title. Customer shall provide PTP with all necessary cooperation for the revindication, such as access to the locations and areas where the Products are located, such at PTP’s first request. Any costs incurred by or on behalf of PTP for the revindication shall be borne entirely by Customer.
11. PTP shall not be liable for any damages suffered by Customer in connection with revindication.
12. Revindication does not affect PTP's right to claim damages or performance of the Agreement or to terminate the Agreement for breach (in whole or in part). The market value of the revindicated Product for PTP will never reduce any claims PTP has on Customer.

**ARTICLE 6: COMPLAINTS**

1. Customer checks the Product immediately upon receipt against the packing slip.
2. If the complaint concerns a Product that is "Dead on Arrival" (DOA) or a Product that is (became) defective within 30 days after delivery, the RMA Conditions (click here for the RMA Conditions) shall apply.
3. Customer must report visible and non-visible defects, defects, damages, and deviations to PTP in writing within 2 calendar days of their discovery, at the risk of forfeiting all rights and claims in this regard.
4. All complaints must contain as detailed a description as possible (if possible including visual material) of the defect so that PTP is able to respond adequately. Customer must give PTP (or a third party such as the supplier of the Product) the opportunity to investigate the defect (or have it investigated) and to keep PTP informed of all relevant information.
5. If complaints are not reported in a timely manner (within the period mentioned in Article 6.2 or 6.3), in the manner prescribed by PTP and/or Customer does not cooperate in the investigation by PTP (as referred to in Article 6.4), the Product is deemed to comply with the Agreement. In that case, any right of Customer to repair, replacement, compensation, etc. shall lapse.
6. Products about which Customer has made a complaint can only be returned after written approval by PTP. Customer shall return the Product to PTP no later than 2 calendar days after PTP has given the aforementioned approval and/or PTP has requested the return. The Product must be returned in its original and undamaged packaging and with all accessories supplied. If Customer fails to comply with the aforementioned obligations, Customer cannot claim repair, replacement, compensation etc.
7. Unless otherwise agreed in writing, costs for transportation of returned Products are at the expense and risk of the Customer.
8. PTP will determine whether the returned Product will be replaced, repaired, or credited.
9. Complaints relating to invoices must be made within 7 calendar days of the invoice date. Failure to do so will result in Customer being considered to have accepted the invoice.
10. Lodging a complaint does not release Customer from its payment obligations to PTP.
11. If a complaint is found to be baseless, the costs incurred as a result shall be borne by Customer.

**ARTICLE 7: GUARANTEE**

1. Only the manufacturer's guarantee conditions apply to a new Product. A second-hand Product may also be covered by PTP's supplier's warranty. PTP never provides a more extensive guarantee or guarantee of its own. Assurances given by the manufacturer or PTP's supplier beyond the guarantee conditions are in no way binding on PTP. The Customer cannot rely on these promises towards PTP.
2. Customer cannot invoke a warranty if a defect is caused by or results from inexpert or improper use, accidents, or calamities such as fire and water damage, normal wear and tear, incorrect storage and/or the use of the Product for purposes other than those for which the Product is intended.
3. Customer cannot invoke a guarantee if (PTP has reasonable grounds to suspect that) Customer and/or third parties have made changes to the Product, opened the Product and/or performed maintenance on the Product without PTP's express written permission.
4. The guarantee only applies if Customer has fulfilled all his (financial) obligations to PTP.
5. If Customer seeks to invoke a guarantee, Customer must submit a written request to PTP.
6. A claim under a guarantee does not provide Customer with any grounds for termination of the Agreement and/or any form of compensation.
7. The manufacturer's guarantee is the Customer's sole and exclusive remedy.
8. Costs for repair, replacement, etc. outside a guarantee (term) will be charged to the Customer by PTP.

**ARTICLE 8: LIABILITY**

1. PTP is only liable in case of intent or gross negligence.
2. PTP shall never be liable for incidental, indirect, or consequential damage, including but not limited to loss of use, personal or bodily injury, immaterial damage, loss of production, damage suffered by third parties, damage to the property of third parties, loss of profit or other trading loss of the Customer, irrespective of its origin.
3. PTP is not liable for damage (including to Products) caused by:
	1. errors or omissions in the information provided to PTP by or on behalf of Customer;
	2. unsuitability of a Product for the purposes intended or desired by Customer;
	3. (repair) work, changes and/or adjustments to a Product performed or commenced by the Customer and/or a third party without the prior express written consent of PTP;
	4. software errors, (technical) failures or interruptions, reduced (quality of) (electronic and/or data) connections, whether implemented by PTP or third parties;
	5. malware, (D)DOS attacks, cybercrime;
	6. actions of a third party engaged (as a carrier) for the (partial) execution of the Agreement;
	7. incompetent use of Products by Customer;
	8. PTP being unable to fulfill its obligations due to force majeure or unforeseen circumstances;
	9. use of the Product for purposes other than those for which it is intended, including but not limited to safety-critical or life-support systems, nuclear and/or military equipment, etc.
4. In the events referred to in Article 8.3, Customer is fully liable for all resulting damages and expressly indemnifies PTP against all claims by third parties for compensation for damages they may suffer.
5. PTP's total liability is always limited to the maximum price (excluding VAT) stipulated for the Agreement involved.
6. Without prejudice to the provisions of Articles 8.1 to 8.5, PTP's liability is limited to the maximum amount paid out by its insurance for the damage in question, minus the amount of the excess.
7. To the extent that the damage is not compensated by the insurer, PTP's liability is at all times limited to the price of the Products and/or services delivered with respect to the part of the Agreement to which the event causing the damage relates.
8. Customer indemnifies PTP against any third-party claims arising from a defect in a product or system delivered by Customer to a third party which (partly) consisted of Products delivered by PTP. Customer does not have the right to act on behalf of PTP against, admit any liability to, make promises to, and/or enter into an arrangement with (a) third party (parties), unless PTP has given prior and written permission to do so.
9. PTP stipulates all legal and contractual defences that it can invoke against the Customer in order to defend its own liability, also on behalf of its employees, third parties it engages, and third parties for whose behaviour it is liable by law.
10. As soon as possible after the Customer has discovered or reasonably could have discovered the damage, but no later than within 7 calendar days after the event, Customer shall hold PTP liable in writing, specifying reasons. If the Customer fails to notify PTP within this period, the right to claim damages shall lapse.

**ARTICLE 9: FORCE MAJEURE**

1. In the event of force majeure, PTP has the right to terminate the Agreement (in whole or in part) and/or to suspend its execution for the duration of the force majeure situation by means of a written statement to Customer, without PTP being bound to pay any damages, fines or other compensation to Customer.
2. Force majeure is understood to mean: any circumstance beyond PTP's control as a result of which the full or partial performance of the Agreement can no longer reasonably be expected of PTP. This always includes, but is not limited to: war, threat of war, riots, revolution, strikes, shortages of raw materials for and/or parts of Products, interruptions in electricity or fuel supply, natural disasters, (consequences of) extreme weather conditions, pandemics, government measures, traffic accidents, import or export bans, transport impediments, explosions, fire, IT malfunctions, (attempted) break-ins, business interruptions, as well as delays in delivery or breach of contract by suppliers and/or other third parties.

**Article 10: CONFIDENTIALITY**

1. Customer is obliged, both throughout the term of the Agreement and afterwards, to keep confidential all confidential data, information, and documents that Customer has obtained from PTP in the context of the Agreement or from other sources, unless ordered to do so by a court. Information is considered confidential if so communicated by PTP or if this is apparent from the nature of the information. Such information remains the exclusive property of PTP. On any request by PTP, the Customer shall immediately destroy or return such information.

**Article 11: INTELLECTUAL PROPERTY RIGHTS**

1. All intellectual property rights vested in the Products lie exclusively with PTP, its ((in)direct licensors or its suppliers. Customer only acquires a right of use and/or user right. Any more comprehensive right on the part of Customer is excluded. Any right of use to which the Customer is entitled is revocable, non-exclusive, non-transferable and not (sub)licensable to third parties.
2. Customer shall inform PTP immediately and in writing no later than 2 working days of any claims by third parties regarding the infringement of intellectual property rights due to the use of the Product by Customer, under penalty of forfeiture of all rights and claims in this regard.
3. Customer does not have the right to act on behalf of PTP against, admit any liability to, make promises to, and/or enter into an arrangement with (a) third party (parties) in connection with the alleged infringement of intellectual property rights, unless PTP has given prior and written permission to do so.

**Article 12: TERMINATION OF THE AGREEMENT**

* 1. PTP may terminate the Agreement (in full or in part) with immediate effect, without notice of default or judicial intervention being required, and without being liable to pay damages to Customer, if:
1. Customer defaults on the (timely) payment of its due financial obligations and/or other obligations under the Agreement or these Conditions;
2. Customer is declared bankrupt:
3. Suspension of payments is granted to the Customer;
4. PTP learns of any circumstances that provide reasonable grounds to fear that the Customer will not fulfil its obligations.
	1. In the event of a termination due to the circumstances referred to in Article 12.1, all claims PTP has against the Customer are immediately due and payable, without prejudice to PTP's right to claim full compensation for damages.

**ARTIKEL 13: APPLICABLE LAW AND DISPUTE SETTLEMENT**

* 1. These Conditions, the Agreement, and all rights and obligations arising from them shall be governed by Dutch law.
	2. All disputes arising from the Agreement shall be settled exclusively by the District Court of Gelderland, Arnhem location.

--- Version September 2023 ---