

## 1. General

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- 1.1. The following General Terms and Conditions in the relevant version at time of conclusion of the contract shall be an integral part of any contract with Primus Aviation GmbH ("Primus") for all deliveries of goods and services supplied by Primus and its subsidiaries. Any deviations thereof or contradictory terms are not acknowledged by Primus unless expressly confirmed in writing by Primus.
- 1.2. The General Terms and Conditions shall apply to both private and public physical and legal persons ("Customer ") unless otherwise stated in the relevant provision.
- 1.3. Primus shall be authorized to delegate/ subcontract any service ordered by the Customer to an approved third party without previously notifying the Customer.
- 1.4. Order cancellations and suspensions require mutual consent. Possible expenses resulting therefrom shall be borne by the Customer and a cancellation fee of 15 % (fifteen percent) of the price will be charged.
- 1.5. By accessing and using goods and/or services provided by Primus the Customer accepts and agrees to be bound by provisions of this Terms and Conditions.

## 2. Conclusion of Contract, Scope of the Delivery, Prohibition of Assignment

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- 2.1. Contracts shall be effective when confirmed in writing by Primus or upon initiation of the service quoted.
- 2.2. As a general rule, Primus's offers are free of charge and non-binding, unless agreed upon otherwise in writing.
- 2.3. Any offer or agreement requires written acceptance by Primus in any form, of order or Primus's delivery of the goods. The same shall apply to any amendments, changes, cancellations or side agreements.
- 2.4. Primus's written acceptance of order or, in the event of lack of such acceptance of order, Primus's offer shall be authoritative for the scope of delivery and the service to be rendered.

- 2.5. All information about Primus's goods, in particular pictures, sizes, performance criteria and any other technical data contained in Primus's offers and brochures shall be regarded as approximate average values. Tolerances in quantity, weight, number of pieces and dimensions customary in this line of business are expressly reserved.
- 2.6. All documents and data on which Primus's offer is based, such as technical drawings, illustrations, descriptions, weights and sizes, shall only be binding if expressly agreed upon in writing. Primus reserves the right to make minor changes and modifications to the extent such changes or modifications do not substantially impair the purpose of the contract and the delivery. All of Primus's documents and data remains its property. Such documents may neither be retained nor copied or otherwise reproduced or made available to third parties by the Customer and have to be handed out to Primus immediately upon its request. Even if Primus leaves these documents to the Customer, Primus's intellectual property rights remain unaffected hereby.
- 2.7. The Customer shall not be entitled to assign any claims against Primus without prior consent by Primus, to third parties. The same shall apply to any of the Customer's claims against Primus in connection with the contractual relationship which have arisen by operation of law.

### 3. Prices

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- 3.1. The prices quoted in the order confirmation of Primus shall solely apply. Additional services will be invoiced separately.
- 3.2. All invoices will be sent via e-mail to the Customer.
- 3.3. All prices are quoted as net prices and do not include value added tax, which is to be paid by the Customer in addition to the price in an amount specified by applicable law.
- 3.4. All prices shall be net ex-works (EXW EX INCOTERMS 2020) unless specifically otherwise agreed. Subcontractor and spare parts price increases, foreign exchange rate fluctuations, and increases of customs charges, taxes or other dues augmenting Primus's cost price shall be borne by the Customer if they occur after the confirmation of order. The Parties shall collaborate for the compliance with any tax laws and regulations, and provide each other with any certificate, document and

assistance that the other Party can reasonably request to comply with worldwide tax laws and regulations.

- 3.5. Any payments due by the Customer to Primus are subject to VAT if provided so by the applicable legislation. The Customer will pay this VAT to Primus in addition and at the same time to those other payments due by the Customer to Primus under this and/or separate arrangements.
- 3.6. Upon request of Primus, the Customer will submit to Primus a valid VAT identification or registration number together with its VAT registration certificate as well as satisfy other applicable conditions, if any, for a possible VAT exemption, zero-rating or exception to the applicable VAT charge. Primus is further allowed to request additional information required for purposes of defining the correct VAT treatment of its services to the Customer in accordance with the applicable VAT legislation.
- 3.7. In case the delivery of goods is delayed by more than 2 (two) weeks for reasons outside Primus's control the prices will be adjusted at the time of delivery of the goods at Primus's sole discretion:

- a) according to any increases reflected in the latest Austrian Consumer Price Index published by the Central Office for Statistics in Vienna or
- b) to the then published list prices of the goods.

#### 4. Delivery/ Execution of Service/ Deadlines

- 4.1. Unless otherwise expressly agreed, Primus shall deliver ex works (EXW EX INCOTERMS 2020) using these Terms and Conditions.
- 4.2. Delivery periods shall only be binding if expressly agreed in writing. Delivery periods shall begin on the date of the order confirmation by Primus, however, in no case prior to settlement of all details relating to an order including the furnishing of any required official certificates. Delivery periods shall be deemed to be met on timely notification of readiness to ship if the goods cannot be dispatched in time through no fault of Primus.
- 4.3. With respect to delivery periods and dates, which are not expressly defined as fixed in the order confirmation, the Customer may -two weeks after expiry of such a delivery period or date- set an adequate grace period for delivery. Primus may only be deemed to be in default after expiry of such a grace period.

- 4.4. Without prejudicing Primus's rights from Customer's default, delivery periods and dates shall be deemed to be extended by the period of time during which the Customer fails to comply with his obligations towards Primus. In case Primus does not comply with its obligations Primus shall only be liable for all types of damages in accordance with section 10 of these Terms and Conditions.
- 4.5. Primus reserves the right to carry out a delivery using its own delivery organization.
- 4.6. Primus is entitled to deliver before the expiry of the delivery date and to deliver in partial deliveries, unless agreed upon otherwise in writing.
- 4.7. The Customer may rescind the contract after two unsuccessful grace periods unless the hindrance is merely temporary in nature and a delay would not unreasonably affect the Customer.
- 4.8. Any contractual or statutory right of a Customer to rescind the contract, which the Customer fails to exercise within a reasonable period of time set by Primus, shall be forfeited.
- 4.9. A term of delivery or execution of service shall be extended appropriately in the event of Force Majeure or any unforeseen obstacles which affect Primus or Primus's suppliers. Such an unforeseen and extraordinary obstacle shall be particularly given in the event of unrest, strike, lock-out, fire, confiscation, embargo, statutory or official orders and constraints or incorrect and/or delayed self- supply, if and to the extent such obstacles have not been culpably caused by Primus and such obstacles have influence on Primus` ability to timely fulfil its obligations under the contract. If due to such circumstances the term of delivery shall be extended for a commensurate period of time, the Customer shall be entitled to withdraw from the contract after expiry of such extended term of delivery. If the Customer is interested in partial performance of the contract, he may withdraw from such part of the contract that is yet unfulfilled. If Primus has already performed in part, the Customer may only withdraw from the entire contract if the Customer can evidence that he has no interest in partial delivery and/or service by us. Further statutory or contractual rights to withdraw from the contract remain unaffected hereby.

- 4.10. If Primus is in delay of delivery or service and a reasonable grace period defined by the Customer has expired unsuccessfully, the Customer shall be entitled to withdraw from the entire contract or, if the Customer is interested in partial performance of the contract, withdraw from such part of the contract that is yet unfulfilled. If Primus has already performed in part, the Customer may only withdraw from the entire contract if the Customer can evidence that he has no interest in partial performance. Further claims of any kind, in particular claims for damages based on bad performance or damage caused by delay, are excluded. Section 10 of these Terms and Conditions remains unaffected hereby. If and to the extent Primus is liable for damages caused by delay according to section 9 of these Terms and Conditions, the Customer is entitled to claim compensation for the default, which shall amount to 0,5 % (zero-point five percent) of the contract price for every full week of the delay, but not more than 5 % (five percent) in the aggregate amount, for that part of the delivery which cannot be used in time because of the delay. The parties are free to demonstrate that the actual damage is actually incurred was higher or lower than this amount.
- 4.11. Any work deadlines are binding only if it has been expressly confirmed in writing as such by Primus.
- 4.12. Observance of such binding deadlines shall be subject to the Customer having previously met all contractual obligations. If this is not the case, appropriate deadlines postponements shall be specified, or work stoppage may occur. Deadlines shall also be postponed if compliance with the defined deadline is not possible because of force majeure or unforeseeable events such as lack of spare parts.

## 5. Shipment, Passing of Risk

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- 5.1. Unless otherwise expressly agreed, shipment shall always be carried out at the Customer's risk. The risk shall pass to the Customer as soon as the goods have been handed over to the person executing the shipment.
- 5.2. If a shipment is delayed for reasons to be attributed to the Customer, the risk of accidental deterioration, loss and destruction shall pass to the Customer on notification of Primus's readiness to ship. Required storage costs after passing of risk shall be borne by the Customer. This shall not affect any other claims.

- 5.3. If the Customer defaults in accepting, Primus shall be entitled to claim refund of any expenditure associated therewith and the risk of accidental deterioration, loss and destruction shall pass to the Customer.

## 6. Payment

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- 6.1. Any exchange rate risks, and transfer fees shall be borne by the Customer.
- 6.2. The contract price shall be paid in advance unless agreed otherwise.
- 6.3. The full payment (100 % net) of the contract price shall be made in advance. Additionally, a deposit according to Primus's instructions shall be laid down by the Customer. Payments shall be deemed settled when the account of Primus has been credited with the appropriate amount unencumbered.
- 6.4. The full payment (100 % net) of the contract price shall be made in advance. Additionally, a deposit according to Primus's instructions shall be laid down by the Customer. Payments shall be deemed settled when the account of Primus has been credited with the appropriate amount unencumbered.
- a) If deposits are not laid down by the Customer within 2 (two) weeks after receipt of the advance payment invoice, Primus shall have the right to cancel the order and charge a 20 % (twenty percent) cancellation fee of the net price of the ordered goods. If the Customer still requires the goods after cancellation, a new order shall be placed.
- b) Wrongly ordered spare parts must be returned within 5 (five) calendar days after receipt of the goods subject to the prior written approval by Primus. A cancellation/restocking fee of 20 % (twenty percent) of the net price will be charged to the Customer. The original certificates, copies of delivery note, invoice and a copy of Primus's authorization have to be sent to Primus together with the return of the goods.
- 6.5. The Customer shall not be entitled to withhold or reduce any payments due because of alleged claims against Primus.

- 6.6. Until the Customer has fulfilled all financial obligations, the goods supplied shall remain Primus's property. The resale or other disposal of the goods subject to this reservation of ownership, such as pledging or assignment as security, are not allowed. In the event of resale or other further disposal of any goods subject to this ownership reservation – even if not in accordance with the contract – the Customer agrees to assign herewith to Primus in advance any claims he may have against any third party; on account of payment, the Customer, as well as the third party, remaining liable to Primus for paying any amount due without any change in the maturity date. Should the Customer be in default Primus or an authorized and/or empowered third party shall have the right to take or collect the items subject to this ownership reservation from the custody of the Customer without his consent. In any case the Customer undertakes to explain to any third party that the items subject to this ownership reservation are the property of Primus and to inform Primus immediately of any measures concerning its property, in particular of any official orders (e.g. the establishment of an enforceable lien).
- 6.7. If Primus agreed on partial payment before shipment, the Customer is not allowed to modify or resell the goods until completing payment in any case.
- 6.8. The Customer shall be obliged to meet all legal requirements in order to safeguard Primus's property or security interest. In case of attachment or other kinds of seizure the Customer shall evidence Primus's, title and notify the latter immediately. The retention of title shall not affect the passing of risk in section 5 of these Terms and Conditions.
- 6.9. The Customer shall be obliged to meet all legal requirements in order to safeguard Primus's property and/or security interest. In case of attachment or other kinds of seizure the Customer shall evidence Primus's, title and notify the latter immediately. The retention of title shall not affect the passing of risk in section 5 of these Terms and Conditions.
- 6.10. With excess of the payment term Primus is authorized to demand reminder fees of EUR 50,00 starting with the second reminder.
- 6.11. If the payment is not received on Primus's account after the third written notification (reminder) the account will be locked. At successful payment of the outstanding amount (including created reminder fees and interest) Primus charges an unlocking fee of EUR 150,00.

- 6.12. Primus shall be entitled to withdraw from a contract with the Customer if any due payment has not been settled in spite of repeated reminders, and if it is feared there may be deterioration in the economic situation of the Customer and if the Customer refuses to provide an appropriate banker's guarantee for the performance of his contractual obligations. In the case of a withdrawal from the contract, Primus shall charge the Customer the cost incurred until that time, but not less than the cancellation fee 20 % (twenty percent) of the net contract value.
- 6.13. Furthermore, Primus is entitled to refuse its performance if and to the extent circumstances become known after the conclusion of the contract that give cause to reasonable doubts that the Customer will- in total or in part- not perform on time or properly, unless the Customer has provided adequate securities.
- 6.14. In the event of delay of payment Primus is entitled to make any further deliveries or execution of services dependent on the complete settlement of such outstanding payments. Default interest shall be 9,2 % (nine point two percent) per annum above prime lending rate. Fees will still remain due.

## 7. Retention of Title

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- 7.1. Delivered goods shall fully remain property of Primus (goods sold subject to retention of title) until all invoices, on whatever legal grounds, have been fully paid up.
- 7.2. In case of processing, combining or mixing of goods subject to retention of title with goods of the Customer, Primus shall be entitled to co-ownership of the new property in as much as the invoiced value of goods sold with retention of title relates to the value of the other involved goods. Where Primus co-ownership becomes null and void due to processing, combining or mixing with other goods, the Customer immediately assigns to Primus those of his rights of ownership in the new property or compound matter which correspond to the amount of the value of goods subject to retention of title by Primus. The Customer shall also be responsible for holding such rights in safe custody on the behalf of Primus and at Customer's own expense. Any rights to co-ownership created as a result of such processing, combining or mixing shall be subject to section 7.1 of these Terms and Conditions.



7.3. The Customer may resell, process, combine or mix with other property, or otherwise integrate goods under retention of title in normal business operations, as long as the Customer is not defaulting. The Customer shall be prohibited from taking any other disposition regarding goods for which Primus retains title. Primus shall be promptly notified about any hypothecation or other seizure of goods under retention of title through a third party. All intervention costs will be charged to the Customer if and to the extent that they cannot be collected from such third party. If the Customer grants his buyer additional time for payment of the sales price, the Customer shall reserve title in goods resold with retention of Primus's title under the same terms which Primus has applied when delivering such goods with retention of title. The Customer shall be prohibited from any other kind of resale.

7.4. The Customer shall immediately assign to Primus any receivables resulting from a resale of goods initially sold with retention of Primus's title. These will be used to substitute the goods under retention of title as collateral of the equivalent amount. The Customer shall only be entitled and authorized to resell such goods if his receivables therefrom accrue to Primus.

7.5. If the Customer resells goods under retention of Primus's title together with goods from other suppliers at a certain total price, the Customer shall assign to Primus his receivables from such resale in the same amount as stated in the invoice for goods initially sold with retention of title by Primus.

7.6. If an assigned receivable is included into a current account, the Customer immediately assigns to Primus that part of the balance which is equivalent to the amount of such receivable, including the final balance from current account operations.

7.7. Until Primus gives notice of revocation, the Customer shall be authorized to collect receivables assigned to Primus. Primus shall be entitled to such revocation if the Customer fails to meet his payment obligations under the business relationship with Primus in due course. If the preconditions for exercising a revocation right are fulfilled, the Customer shall promptly notify Primus of any assigned receivables with respective debtors, furnish all data required for collection of such receivables, hand over all related documentation and advise the debtors of such assignment. Primus reserves the right to personally advise the debtors of such assignment.

7.8. If the value of the collateral deposited for the benefit of Primus exceeds the amount of secured claims by a total of more than 50 % (fifty percent), the Customer shall be entitled to demand that Primus insofar release securities of the choice of Primus.

7.9. If Primus claims retention of title, this shall only be understood as rescind of the contract if expressly stated so by Primus in writing. The Customer's right to possess goods under retention of title shall be null and void if he fails to meet his contractual obligations.

## 8. Warranty

- 8.1. Primus is to be held responsible for defects in workmanship and defects of title according to the following provisions.
- 8.2. If Primus maliciously withholds disclosure of a defect or gives a quality warranty the Customer's rights shall be governed exclusively by the statutory provisions.
- 8.3. Specifications of Primus's goods, especially pictures, drawings, data about weight, measure and capacity contained in offers and brochures are to be considered as average data. Such specifications and data shall in no way constitute a quality warranty but merely a description or labelling of the goods.
- 8.4. Certain characteristics are only considered as warranted if expressly confirmed in writing. A guarantee shall only be deemed issued if a characteristic is expressly denominated as „guaranteed” in writing.
- 8.5. Any rights of the Customer to receive damages or compensation shall be governed by the provisions in section 10 of these Terms and Conditions.
- 8.6. The Customer shall examine goods provided under the contract upon receipt. The Customer shall immediately give notice in writing of any kind of obvious material defects, deviations in quantity and false deliveries, within 3 (three) days after delivery, in any case before connection, mixture, processing or installation; otherwise, the goods are considered to be approved despite these defects, unless Primus has acted with fraudulent intent. The Customer shall immediately give notice in writing of any hidden material defects, at the latest within 3 (three) days after their discovery.

- 8.7. The Customer shall give Primus the opportunity to jointly assess the notified complaints and to be present at any withdrawal for material examination.
- 8.8. All claims for defects are subject to a limitation individually stated in the quotation. This shall not apply to Customer's claims for damages based on damages of body or health caused by a defect for which Primus is responsible or claims for damages based on intentional or grossly negligent conduct by Primus.
- 8.9. Primus's warranty for defects of quality and defects of title shall be limited to supplementary performance. Within the scope of Primus supplementary performance obligation, Primus is entitled, at Primus's discretion, either to remedy the defect (supplementary performance) or to the delivery of faultless material (replacement). If Primus's supplementary performance is delayed beyond a commensurate period of time or if the supplementary performance is unsuccessful despite repeated efforts, the Customer is entitled to reduce the purchase price or to withdraw from the contract. A withdrawal from the contract is excluded if the defect is irrelevant. Furthermore, in the event of faultless partial deliveries, the Customer may only withdraw from the entire if he can evidence that he has no interest in the partial performance. Further claims, in particular claims for reimbursement of expenses and claims for damages, are excluded unless provided otherwise in the following section 10. Primus shall take title to the replaced parts or, as the case may be, they remain Primus's property and they shall be returned to Primus upon request.
- 8.10. The Customer shall return the defective goods to Primus for subsequent improvement or replacement at his own risk, unless a reshipment is not possible because of the kind of delivery. Primus shall bear the costs for transportation due to supplementary performance, however only from the place where the good has been delivered to according to the terms of contract and limited by the amount of the purchase price.
- 8.11. The Customer has to give Primus the necessary time and opportunity for subsequent improvement or replacement. Only in the event of urgent cases of risk to the plant safety, the protection against unreasonably high damages or delay with the removal of defects, the Customer shall be entitled to cure the defect by himself or by a third party after prior notice and to demand from Primus restitution of the necessary costs.

- 8.12. The processing or installation of delivered items is always deemed to be a waiver of the notice of defects to the extent the defect was obvious.
- 8.13. In the event of legitimate notices of defects, payments by the Customer may only be withheld in an adequate proportion to the material defects occurred. In the event of an unjustified notice of defects, Primus is entitled to demand from the Customer reimbursement of the expenses resulting therefrom.
- 8.14. Claims based on defects are excluded in the event of minor deviations from the agreed or usual characteristics or utility.
- 8.15. The recognition of a material defect always requires the written form.
- 8.16. Any warranty shall be void if operating or maintenance instructions are not observed, if changes are made to deliveries or services, if parts are replaced or materials used that are not in accordance with the original product specifications, unless the Customer can show that the defect in question resulted from another cause.
- 8.17. Improper or incorrect use, fair wear and tear, defective or careless treatment, improper maintenance, inappropriate operating materials, mechanical, chemical, electronic, electric and comparable influences which do not correspond to the average standard influences are not subject to any warranty rights.
- 8.18. If Primus liability for defects is based on goods which Primus has acquired from third parties, the Customer shall exclusively assert any claims against Primus's supplier. In such an event, Primus shall assign Primus' claims against Primus's supplier to the Customer. The Customer shall accept the assignment. If the legal proceeding against Primus supplier shall fail, Primus shall be liable according to section 10 of these Terms and Conditions.

## 9. Exchange Sale and Core Policy

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### 9.1. Exchange Agreement

- a) Standard Exchange: Prices for Standard Exchange are based on standard repair/overhaul costs. Parts that are considered non-standard replacement parts (example: piston, housing, armature, etc.) are not included in the standard overhaul/repair cost and will be billed in addition to the exchange sale price. The core units are subject to rejection or to additional billing if they require over and above normal labour to complete the overhaul/repair and/or

if it is found that they do not meet the conditions set out in the section 9.2.c). Should there be additional charges they will be levied at cost.

- b) Flat Exchange: The exchange price is based on a flat rate with no additional billing, unless necessitated by the condition of the core. Items like pistons, shafts, armatures, end-bells, etc. are included in the price of a flat rate exchange. The core units are subject to rejection or to additional billing if it is found that they do not meet the conditions set out in the section 9.2.c). Should there be additional charges they will be levied at cost.
- c) Exchange Plus Cost (EX) Transactions. The Customer agrees to pay an exchange fee additionally to the Repair/Overhaul costs. Repair/ Overhaul costs will be invoiced based on the workshop quotation/estimate and will include a 15 % (fifteen percent) processing fee and the shipping cost. Primus reserves the right to convert the transaction into a straight sale if no decision has been made to approve the quotation within 7 (seven) days. All workshop and transport costs will be added to the invoice.
- d) Loan Transactions. The loan period begins with the dispatch of the loan unit to the Customer. As soon as Primus receives the loan unit back in serviceable condition with complete documentation, the loan will be considered as terminated. If the Customer returns the loan unit in unserviceable condition or with a different serial number or with incomplete/ incorrect paperwork, Primus reserves the right to have the unit repaired/overhauled or recertified at the Customer`s expense.

## **9.2. Core Return Policy**

- a) If the Customer agrees on standard or flat exchange sale, the Customer will be advised of and billed a core charge. This core charge will represent the amount that the Customer will owe above and beyond the exchange price if a core is not returned or the returned core is unacceptable. The core charge will be credited to the Customer`s account upon receipt and acceptance of the core.
- b) Core returns are due within 10 (ten) days domestic and 15 (fifteen) days international from the date the exchange unit was shipped. A late return of a core unit will result in a late return penalty of a 15 % (fifteen percent) daily charge of the exchange sale price. This charge will incur daily until the core unit is received by Primus. If the core unit has not been returned after 30 (thirty) days from the date of shipment, the sale will be considered outright, and the core charge will not be credited.

- c) There are no additional costs for exchange transactions if that the core unit:
  - i. Has the same part number and the same mod status as the originally delivered part, unless this has been previously approved by Primus.
  - ii. Is economically repairable.
  - iii. Is complete with no missing or unauthorized parts.
  - iv. Has no missing or incomplete identification or data tags.
  - v. Has not been previously disassembled or sent for evaluation by a repair facility.
  - vi. Has not suffered from abnormal use, mechanical damage, excessive wear, tear and/or corrosion.
  - vii. Is not incident related (i.e. no fire or water damage).
- d) A core unit will be deemed as beyond economical repair ("B.E.R.") if the cost to repair/overhaul exceeds 70 % (seventy percent) of the agreed outright value of the core unit and will be subject to core rejection.
- e) By returning a core unit, subject to lifetime limitation with less life remaining than the exchange unit provided, the Customer agrees that the core unit will be sent for overhaul at the Customer`s expense.
- f) It is the Customer`s responsibility to provide proof of the shipment and delivery of all outstanding core units.
- g) All units containing liquids must be completely drained and sealed to prevent leakage during shipment and, where applicable, must comply with regulations for the shipment of dangerous substances. Core units should be appropriately cleaned of external oil, grease, and dirt. Core units should be properly packaged and secured.

### **9.3. Return of the unused parts**

- a) Upon receipt, the Customer shall inspect the parts and immediately notify Primus in writing of any non-conformity and shall afford Primus a reasonable opportunity to correct any actual non-conformity. Returned parts should be packaged in either the same manner as originally received or packaging which may be required by law, whichever is more restrictive. A defect claim must be raised in writing within 3 (three) days of receipt of the serviceable part, prior to returning a failed part. Otherwise, the returned part will be processed as a normal core unit and the Customer will be liable for any re-certification, modification and/or overhaul costs.

- b) For each unused part returned 15 % (fifteen percent) of the purchase price shall be charged as a restocking fee. The maximum restocking fee shall be EUR 2.500,00. Each returned part is subject to Primus's quality inspection. Parts returned for credit without all the original documents will not be accepted and the Customer will be responsible for any associated costs. Primus shall charge recertification and/ or transportation fees if the tamper-proof seal of the returned unused part is not intact. No return of the unused part will be accepted by Primus after 30 (thirty) days.
- c) If Primus determines that the returned unused part was used, Primus shall charge any fee necessary to restore the part to the condition in which it was delivered.

## 10. Limited Liability

- 10.1. In case of a breach of contractual obligations, defective deliveries or tortuous acts, Primus shall only be obliged to compensate damages or expenses – subject to any other contractual or statutory conditions for liability – if Primus has acted intentionally or with gross negligence.
- 10.2. The exclusions and limitations of liability in section 10.1 of these Terms and Conditions shall not apply in cases of a quality warranty, in cases where Primus has maliciously failed to disclose a defect, in case of damages resulting from death, injury to health or physical injury or where the laws on product liability impose overriding liabilities which cannot be excluded.
- 10.3. The limitation period for claims against Primus – based on whatever legal ground – shall be 12 (twelve) months from the date of delivery to the Customer and in case of tortious claims, 12 (twelve) months from the date the Customer becomes aware or could have become aware of the grounds giving rise to a claim and the liable person, had the Customer not been grossly negligent. The provisions in this clause shall neither apply in cases of intentional or gross negligent breaches of duty nor shall they apply in cases referred to in section 10.3 of these Terms and Conditions.
- 10.4. No liability is assumed by Primus that the goods soled according to the Customer's specifications are suitable for the Customer's purposes und that they work together with existing components.

## 11. Industrial Property Rights, Copyrights

- 11.1. In the event of claims against the Customer because of breach of an industrial property right or a copyright in using deliveries or services

supplied by Primus in accordance with the contractually defined manner, Primus shall be responsible to obtain the right for the Customer to continue using such deliveries or services, provided that the Customer gives immediate written notice of such third-party claims and Primus's rights to take all appropriate defensive and out-of-court actions are reserved. If, despite such actions, it proves impossible to continue using the deliveries or services supplied by Primus under reasonable economic conditions, it shall be understood as agreed that Primus may, at the discretion of Primus, modify or replace the particular delivery or service for removal of a legal deficiency, or take back such delivery or service with refunding of the reasonable value to Primus less a certain deduction to account for the age of the delivery or service in question.

- 11.2. The Customer shall have no further claims alleging infringement of industrial property or copyrights provided Primus has neither violated essential contractual duties nor intentionally or grossly negligently breached contractual duties. Primus shall have no obligations in accordance with section 10.1 of these Terms and Conditions in case breaches of rights are caused by exploiting the deliveries or services supplied by Primus in any other manner than contractually defined or by operating these together with any other than Primus deliveries or services.
- 11.3. Manuals and handbooks are only lent if not explicitly purchased by the Customer. No part of the manuals/ handbooks shall be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without prior written permission by Primus.
- 11.4. In the event of a Customer's transfer or termination of the contract, the manuals/ handbooks shall be personally handed over to Primus and additional for manuals distributed in electronic form, the Customer shall assure that all manual contents are removed from data storage media.
- 11.5. The Customer is to be held responsible for defects or loss of the manuals/ handbooks and compensation shall be charged.
- 11.6. The Customer shall be solely responsible for the documents which have to be provided by him such as drawings, models, samples or the like. The Customer shall ensure that the manufacturing drawings don't infringe third party intellectual property rights. The Customer shall indemnify us and hold us harmless against all third party claims in this respect.



## 12. Termination

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12.1. Both parties may at any time, by written notice, terminate the contract or any part thereof, if any of the following circumstances occurs:

- a) bankruptcy proceeding is instituted against either party's assets, or such proceeding is not instituted because of insufficient assets;
- b) such other party materially breaches the contract and fails to remedy such breach within 2 (two) months after written notice is given.

12.2. Primus may at any time, by written notice, terminate the contract or any part thereof, if

- a) delivery becomes impossible for reasons attributable to the Customer;
- b) the Customer's financial situation has worsened notably after signing of the contract and the Customer is unable or unwilling to provide adequate security for payment of its financial obligations under the contract;
- c) due payments are not received from the Customer despite Primus's fulfilment of its obligations and the Customer fails to pay within 60 (sixty) days established in writing; or
- d) a change of the Customer's ownership or management control takes place which has a substantial impact on Primus's interests.

## 13. Confidentiality

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13.1. Unless otherwise expressly stipulated in writing, no information provided to Primus in connection with orders shall be regarded as confidential, unless their confidential nature is obvious.

13.2. Primus points out that personal data in relation to the contractual relationship may be stored by Primus and may be transferred to companies associated with Primus.

## 14. Applicable Law and Jurisdiction

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14.1. All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International

Chamber of Commerce by one arbitrator appointed in accordance with said Rules.

14.2. The place of arbitration shall be Graz, Austria. The procedural law of this place shall apply where the Rules are silent.

14.3. The arbitral award shall be substantiated in writing. The arbitrator shall decide on the matter of costs of the arbitration.

14.4. The language to be used in the arbitral proceedings shall be German or English. Original Documents in English need to be translated into German.

## 15. Miscellaneous

15.1. If any provision of these Terms and Conditions is or becomes invalid or void, the other provisions shall not be affected thereby. The parties agree to replace any invalid or void provision by a valid provision which has a content that is as similar as possible to the invalid or void provision.