

1. Scope

1.1. These GTC shall apply exclusively to companies, to legal entities under public law or to a public-law special fund. On acceptance of the delivery or service the Customer recognises our GTC and renounces his own GTC. We shall only recognise conflicting terms and conditions of the Customer if we expressly agree to their validity in writing.

1.2. Purchase orders shall be non-binding until we have confirmed them in writing.

2. Delivery

2.1. Delivery dates and periods of delivery shall be non-binding unless expressly otherwise agreed in writing. A new delivery date must be agreed where any subsequent contractual amendments are applied. The dispatch/collection of the goods shall be authoritative in determining compliance with the delivery date or period of delivery. If delivery dates or periods of delivery are agreed in writing, these shall be subject to correct delivery, in accordance with the contract, by our upstream suppliers.

2.2. The Customer shall be solely responsible for complying with any import and export regulations applicable to deliveries or services. In the event of cross-border deliveries or services the Customer shall bear all customs duties, fees and other charges arising. Unless expressly otherwise agreed, the Customer shall deal with any legal or official processes connected with cross-border deliveries and services to him and shall do this on his own responsibility.

2.3. If a period of delivery or delivery date cannot be complied with due to force majeure (war, strike, lockout or other unforeseeable impediments, or due to operational disruptions for which we are not responsible and which have occurred or become known to us after conclusion of the contract), then the period shall be extended appropriately, but at most for the duration of the impediment. This shall also apply if such unforeseeable events affect the operations of our upstream supplier, provided that neither we nor the upstream supplier are responsible for such events.

2.4. In the event of software deliveries (standard software and customized software), the Customer shall not have any entitlement as regards transfer and use of the source code.

2.5. Unless otherwise agreed, the software shall be installed and rolled out by the Customer.

2.6. Partial deliveries and partial services shall be permitted to a reasonable extent. They shall be invoiced separately.

3. Amendments

3.1. Where the manufacturer applies price changes or changes in the configuration of the ordered goods, we reserve the right to pass these on to the Customer, or to withdraw from the contract without compensation.

3.2. We shall not be obliged to comply with any requests for changes regarding configuration, intended use, conditions of use or other requirements on the goods or services that are notified to us by the Customer after the contract has been concluded.

4. Remuneration for services and work under contracts for work and services

4.1. Unless otherwise agreed, we shall charge remuneration based on time and material, at the prices generally valid at the time the contract is concluded. We shall be entitled to issue monthly invoices. If services are remunerated on the basis of time and material, we shall document the type and duration of the work and shall enclose this proof of work with the invoice.

4.2. If the performance that is provided is, at the Customer's request, provided on the basis of partial performances that are called off by the Customer and that are charged according to time and material on an individual basis after each call-off, then the overall performance must have been called off within 12 months of the purchase order date. After this date, we shall no longer be obliged to provide performance. If we accept later call-off of (partial) performances, these shall be charged based on the respective current price list.

4.3. Where PLMForge employees are required to undertake travel, they shall be reimbursed separately in accordance with PLMForge's Travel Expenses Regulation (see No. 6).

4.4. Where charging is on an hourly basis, we shall charge additional overtime, Saturday, Sunday and public holiday premiums in accordance with a special agreement.

5. Delivery prices

5.1. Unless otherwise agreed under an individual contract, the prices according to our current price list at the time of the purchase order shall apply. For orders for a net amount of less than INR 50000.00 a mark-up of INR 3000.00 for small-volume purchases shall be payable.

6. Travel expenses and out-of-pocket expenses

6.1 The following travel expense rates currently apply to all work carried out by our employees outside our company: Travel expenses within India:

Call-out charge (up to 50 travelled kilometres) INR 2500.00; for journeys of more than 50 travelled kilometres: INR 30.0 per kilometre; rail or air fares (plus taxi costs, parking fees, expenses, etc.) according to receipt, plus 50% of the agreed hourly rate for the travel time incurred.

Unless otherwise agreed, we shall charge the kilometres travelled to the place of performance from the PLMForge location of the assigned employee. There is no entitlement to the assignment of employees from the nearest location. Employees are selected on the basis of their ability to provide services. Planning is optimized for the customer, depending on availability; the nearest location is taken into account.

Overnight accommodation charge in India (including out-of-pocket expenses): INR 4500.00 per night. Unless otherwise agreed, travel costs and out-of-pocket expenses as well as other expenses for work performed abroad shall be invoiced in the proven amount, plus a travel time share of 50% of the agreed hourly rate for the accrued travel time.

6.2. Other expenses incurred when not working on company premises shall be invoiced to the Customer in an appropriate amount.

7. Payment terms

7.1. Invoices shall be payable without any deduction within 10 days of the invoice date.

7.2. We shall be entitled to provide our services or deliveries on the basis of contemporaneous performance against cash payment or the provision of collateral if, after the contract has been concluded, circumstances become known that lead us to fear that our claim for payment is jeopardised due to the Customer's inability to pay. Inability to pay shall also be deemed to include cases where the Customer is in default of payment after two dunning notices have been issued without result. If the Customer refuses contemporaneous performance or refuses to provide collateral, we shall be entitled to withdraw from the contract and to demand damages for non-performance or, in the case of a continuing obligation, to terminate such obligation without notice.

7.3. In the event of default in payment we shall be entitled to charge interest at the rate that the bank charges us for overdraft facilities, but at a minimum of 8 percentage points above the respective valid basic lending rate of the State Bank of India. In the case of software and data, we shall moreover be entitled to refuse to allow the Customer further use of the performance for the duration of the default in payment. We shall also be entitled to the statutory rights in the event of default in payment on the part of the Customer.

7.4. The Customer may only offset against claims that are undisputed or res judicata. Where it is not disputed that part of the performance is defective, the Customer shall nevertheless be obliged to effect payment for the part that is free of defects.

7.5. All prices shall be exclusive of the respective valid rate of turnover tax.

8. Dispatch and transfer of risk

8.1. For goods deliveries, dispatch shall be EXW, from our central warehouse in Pune (or from our sites). In the absence of a special agreement, we shall choose the means of transport and the transport route.

8.2. The Customer shall bear any resulting costs if a special type of dispatch is required or if deliveries are to be effected to other countries. Subject to a charge, we can arrange transport insurance for the transport process, where this is requested by the Customer.

8.3. Risk shall transfer to the Customer once the goods leave PLMForge's warehouse, irrespective of who is paying the transport costs. Where collection has been agreed, risk shall transfer to the Customer on notification that the goods are ready for collection.

8.4. Immediately the goods are received, the Customer shall inspect the quality of the delivery and performance, report any transport damage to the person providing the transport, obtain the corresponding documents and inform PLMForge of this immediately by phone and in writing.

8.5. In the case of software or data and unless otherwise agreed, the items comprising the performance shall be transferred to the Customer when they are made available for download on the respective website that we have notified/specified to the Customer. We shall notify the Customer when the items of performance are made available for download. The risk of accidental loss shall pass to the Customer when we provide notification that the items comprising the performance are available.

9. Rights of use

9.1. We shall be exclusively entitled to all rights to work results, including in particular the copyright. This shall also apply where the work results have arisen as a result of specifications or participation on the part of the Customer. Unless otherwise agreed in writing, the Customer shall have a simple, non-exclusive and non-transferable right of use for the intended purpose. Software shall only be due in object code.

9.2. Where PLMForge standard software is delivered, the respective PLMForge End User License Agreement (EULA) shall also apply. Where there is a contradiction between the terms of the GTC and those of the EULA, the provisions of the EULA shall take precedence.

9.3. Where software by third-party manufacturers is delivered, use of the software shall be permitted only within the scope of and in compliance with the respective manufacturer's license provisions.

10. Reservation of title

10.1. The delivered goods shall remain our property until full payment of all receivables under the business relationship with the Customer.

10.2. The Customer shall be authorised to sell on our goods that are subject to reservation of title in the ordinary course of business. The Customer herewith assigns all resulting receivables against third parties to us in advance as collateral. We herewith accept the assignment. Notwithstanding this assignment, the Customer shall remain entitled to collect the receivables. On request the Customer must notify us of the assigned receivables and the corresponding debtors and must provide us with all information and documents necessary for collecting the receivables. At our request the Customer shall notify the debtors in question of the assignment to us.

10.3. If the value of the existing collateral exceeds the secured receivables by a total of more than 20%, then we shall at the Customer's request be obliged to release collateral of our choice in the said amount.

11. Duties of participation

11.1. The Customer shall be obliged to support us where necessary and also within his sphere of influence to establish all conditions to enable proper implementation of the order. To this end, the Customer shall provide us in good time and unprompted with all information required to provide the contractual services, including all customer data required to implement the respective project and shall where necessary enable remote access to the customer system.

11.2. The Customer shall in particular grant access to all rooms during normal hours of business and shall by agreement grant access to the Customer's hardware and software and to his system administration, where this is necessary for provision of contractual performance. The Customer shall also ensure that competent personnel are available to provide support.

11.3. The Customer shall back up the data and relevant operating systems at regular intervals and before we intervene in any IT systems. We shall inform the Customer of such interventions in good time.

11.4. The Customer's duties of cooperation are primary obligations. If the Customer infringes his duties of cooperation and if this results in delays or additional expenditure, then notwithstanding any more far-reaching statutory rights, we may demand changes to the delivery date/period of delivery and to the agreed prices/remuneration. In addition, we may set an appropriate period of grace within which the duties of cooperation must be fulfilled; following unsuccessful expiry of such period we shall be entitled to withdraw from the contract.

12. Default

12.1. If we are able to foresee that we will not be in a position to provide our contractual performance within the agreed period, we shall notify the Customer of this immediately, inform him of the reasons and where possible state the anticipated date on which we will be able to provide performance.

12.2. If the delivery or service is delayed due to circumstances of force majeure (see No. 2.3) or through actions or omissions on the part of the Customer, then the delivery date or period of delivery shall be extended by an amount that is appropriate to the circumstances. If expenditure increases due to such disruption, we shall be entitled to demand reimbursement of the additional expense, unless the Customer is not responsible for the disruption and its cause is outside his sphere of responsibility.

13. Defects

13.1. Except in the case of claims for damages, the limitation period for defects shall be 12 months from the beginning of the statutory limitation period. With the exception of claims based on intent or gross negligence and of claims based on loss of life, personal injury and damage to health, claims for damages due to defects shall also become statute-barred in 12 months. Claims under the Product Liability Act shall not be affected by this provision. If the manufacturer grants a longer warranty period for merchandise we assign our warranty claims against the manufacturer to the Customer – as far as permissible.

13.2. The Customer must inspect the delivery immediately and if a defect is identified, he must notify us immediately in writing. If the Customer fails to notify us, the goods shall be deemed to have been approved, unless the defect is one that was not identifiable at the time of the inspection. Where services under a contract for work and services are provided in accordance with the contract, the Customer shall be obliged to accept such services immediately.

13.3. The Customer must notify defects in writing and in a clear and detailed manner stating all information that is useful for identifying and analysing the defect. In the case of software it is in particular necessary to state the work steps that led to the occurrence of the defect, the way in which the defect manifests itself and the consequences. Where necessary we shall be entitled to forward this information to the manufacturer for the purposes of joint fault analysis and rectification.

13.4. We must be given the opportunity to ascertain the notified defect. Goods for which a complaint has been made must be returned to us immediately on request; we shall assume the transport costs if the complaint is justified. Any claims for liability for defects shall expire if the Customer does not fulfil this obligation or makes modifications to goods for which a complaint has already been submitted but does so without our consent. If, when ascertaining the defect, it emerges that the defect that occurred was not attributable to our deliveries or services, we shall be entitled to charge the Customer for any expenses incurred.

13.5. In the case of a justified defect that was notified on time, we shall at our discretion either improve the goods that are the subject of the complaint or deliver a replacement that is free of defects. If we do not fulfil this obligation or do not fulfil it in accordance with the terms of the contract, the Customer may set us a written final deadline within which we must fulfil our obligations. After this deadline has expired unsuccessfully, the Customer may demand reductions in the price, withdraw from the contract or carry out the necessary subsequent improvement himself, or arrange for a third party to carry out said improvement, at our costs.

13.6. If we are unable to rectify the defect or supply a replacement that is free of defects, we shall notify the Customer of a workaround. If this is reasonable for the Customer, this shall be deemed subsequent performance.

13.7. If an acceptance procedure was agreed for the goods, then any complaint concerning defects shall not be admitted where the Customer should have been able to detect such defects during a careful inspection procedure.

13.8. Unless otherwise regulated above, warranty processing shall be subject to the respective manufacturer terms and conditions.

13.9. We shall not be held liable for material defects that arise due to unsuitable or incorrect use, incorrect assembly or commissioning by the Customer or by third parties, normal wear and tear, incorrect or negligent handling; equally, we shall accept no liability for the consequences of modifications or repair work by the Customer or third parties that are carried out incorrectly or without our written consent. The same shall apply to defects that reduce the value or suitability of the goods to only an insignificant degree.

13.10. If a third party asserts claims against the Customer that are based on patents, copyrights or other industrial property rights on account of the software that we delivered, we shall at our own cost represent the Customer in any legal dispute pursued against the Customer and shall indemnify the Customer in respect of any such claims. This shall, however, apply only if the Customer immediately notifies us of corresponding complaints by third parties and of the details of any legal disputes and allows us to make all decisions concerning further use of the disputed software, legal defence and negotiation of a settlement and only if we are informed of such claims before the limitation period for claims relating to defects of title have expired.

14. Liability

14.1. Unless otherwise specified below, all other more far-reaching claims of the Customer against us shall be excluded. This shall in particular apply to claims for damages on account of breach of contractual obligations or on account of liability in tort. Consequently, we shall not be liable for damages that have not arisen on the delivered goods themselves. In particular, we shall not be liable for lost profit or other pecuniary loss on the part of the Customer. Our liability shall furthermore be limited to the extent that the damage is covered by our third-party liability insurance.

14.2. The above limitations on liability shall not apply in the case of intent, gross negligence on the part of our legal representatives or executive employees or in the case of culpable infringement of material contractual obligations. In the event of culpable infringement of material contractual obligations, then except in cases of intent or gross negligence on the part of our legal representatives or executive employees, we shall be liable only for damage that is typical under the contract and that is reasonably foreseeable.

14.3. Furthermore, the limitations of liability shall not apply in cases where there is liability under the Product Liability Act, on account of defects in the item delivered, for personal injury or physical damage to privately used objects or in cases of loss of life, personal injury or damage to health and in cases involving an absence of guaranteed properties, if and to the extent that the guarantee was intended to safeguard the Customer against damage that did not occur on the delivered goods themselves.

15. Liability for data loss

In cases of loss of data, we shall be liable only for the expense that is necessary to restore the data where the data was properly backed up by the Customer.

16. Confidentiality

16.1. Both parties to the Contract undertake to use all documents and information that are obtained within the framework of the contractual relationship only for the agreed joint purposes and to apply the same care that they would apply with corresponding documents and information of their own in maintaining secrecy vis-à-vis third parties, if the other party to the Contract designates such documents and information as confidential or has an obvious interest in keeping such documents and information secret. These obligations shall commence when first knowledge is obtained/when the information is first received and unless otherwise agreed in writing in an individual case, they shall at the latest end 36 months after the business relationship has finished.

16.2. The above obligations shall not apply to documents or items of information that were generally known or that were already known to the contracting partner when they were received or that were provided to it afterwards by a third party that was not under any secrecy obligation or that were developed by the recipient contracting partner without utilising documents or items of information that were subject to a secrecy obligation.

17. Final provisions

17.1. The services detailed in the Appendix “Specific Contractual Terms for Certain Areas” shall additionally be subject to the rules described therein. In the case of a conflict between these GTC and the rules contained in the specific contractual terms, the specific contractual terms for the respective area shall take precedence.

17.2. Unless otherwise agreed, the place of performance is Pune. The conclusion of contracts and any amendments to contracts shall require written form.

17.3. The place of jurisdiction for all disputes arising under the contractual relationship is Pune. We shall also be entitled to bring an action at the Customer’s registered office.

17.4. The contractual relationship shall be governed exclusively by the laws of Republic of India. The United Nations Convention dated 11 April 1980 on Contracts for the International Sale of Goods (CISG) shall not apply.

Appendix to the General Terms and Conditions of Delivery and Payment of PLMForge Software Solution
Private Limited.

– Specific Contractual Terms for Certain Areas –

1. IT services

1.1. IT service refers to the provision of services on IT systems. The services mainly include the installation of operating systems and application software, the installation of client, server and storage systems, and the administration of hardware and software.

1.2. The Customer must provide all required auxiliary supplies and operating resources free of charge. Where services are provided on site or on a remote basis the Customer shall ensure that competent staffs, which are authorised to make decisions, are available to provide support. Unless otherwise agreed, our services shall be remunerated on the basis of time and material. We shall document the services we provide in the timesheet.

2. Customer Care Centre services

2.1. We shall provide customer care centre services on the basis of a contract that is to be concluded in writing between us and the Customer.

2.2. We may increase the prices of the services subject to 3 months' advance notice, but at the earliest 12 months after conclusion of the contract. Any rise in prices must be within the framework of the norm for the sector. At the time the price increase becomes effective, the Customer may terminate the contract by giving one month's written notice.

3. CAD/PLM Training

3.1. The terms of this Section 3 regulate the provision of training services by us. The contractual services are listed in our online course database (*Trainings.PLMForge.in*) or in our course catalogue.

We also offer courses specifically tailored to our customers' requirements. Training is provided in one of our training centres or on site on the Customer's premises.

3.2. Registration

Registrations can be made through e-mail.

3.3. Prices

Unless otherwise agreed, the prices as stated in our online course database/in our course catalogue shall apply per participant.

The price of our standard courses shall include training documents, lunch, snacks and drinks. We shall charge you travel expenses for our trainers in accordance with No. 6 of our GTC.

3.4. Copyright

The training documents that are handed out are protected by copyright and may not be duplicated – even in the form of excerpts – without our consent.

3.5. Cancellation

Cancellations may only be made by e-mail. If we receive the cancellation at the latest 2 weeks before the start of the course, the course fee will not be charged. In the case of cancellations received by us at the latest one week before the start of the course, we will charge the customer 50% of the course fee incurred. In the case of cancellations received even later or non-participation, the full course fee will be charged. The customer has the option of naming a substitute participant for the course at any time. If you have any questions, please contact trainings@PLMForge.in.

3.6. Other terms and conditions

Courses are generally only held if there are 3 or more participants. Smaller groups/individual courses are only possible subject to special agreement.

The maximum number of participants for standard courses is 10 people. Special agreements are possible by arrangement.

Please understand that we must reserve the right to cancel courses, for example in the event of insufficient participants (at the latest 2 weeks before the start of the course) or due to the loss of a trainer, force majeure or on similar grounds. In all cases we shall endeavour to notify any cancellations or necessary changes (especially a change of trainer) as soon as possible. If we do have to cancel a course, we shall immediately reimburse any participant fees already paid. All other claims shall be excluded, except in cases of intent or gross negligence on the part of our employees.

On successful completion of a course each participant shall receive a certificate of participation.

Where courses are held on the Customer's premises, the Customer shall establish the conditions necessary to enable the course to be held properly. In particular, he shall provide a suitable training room and a sufficient number of computers and presentation resources (e.g. flipchart, projector).

For courses held on the Customer's premises it is possible to rent our mobile training computers.

4. Projects

4.1. The terms stipulated under this Section 4 govern the specific terms and conditions for software projects, i.e. customising (adaptation of software to the Customer's requirements), programming of individual software and other project-related services.

4.2. The basis for a project is provided by a performance specification, which must be drawn up by the Customer and signed by both parties to the contract. If we prepare the performance specification, we shall charge for the time spent in accordance with our respective valid price list.

4.3. The Customer shall cooperate in the project as far as possible, and in particular shall provide us with all information on his operating requirements and the ambient conditions of the software that are required for the project. Where this is needed in order to provide the performance due, the Customer shall also make rooms and telecommunications lines available to PLMForge employees at his own cost.

4.4. We shall be entitled to conduct checks at the Customer's premises to ascertain whether actual use of the software is in compliance with the license terms of the software that has been delivered by us.