

# PDM TECHNOLOGY

## GENERAL TERMS & CONDITIONS OF SALE AND DELIVERY



**BLUESTAR PLM**<sup>®</sup>

PLM inside Dynamics 365 for Finance & Operations / AX

## TERMS & CONDITIONS OF SALE AND DELIVERY

**These General Terms and Conditions of Sale and Delivery apply to all offers and deliveries made by:**

**PDM Technology International ApS  
Niels Jernes Vej 10  
9220 Aalborg Ø  
Denmark**

**and/or its subsidiaries.**

**(hereinafter collectively "PDMt")**

### 1. Applicability of these terms and conditions

1.1. These terms and conditions apply to all offers and deliveries made by PDMt to its Customers (hereinafter "Customer") as well as agreements in the widest sense and to contracts for services, unless agreed differently in writing.

1.2. Any purchase or other conditions of Customer are not applicable, unless these have expressly been accepted by PDMt's management in writing. In addition, such acceptance cannot be derived from the circumstances that PDMt has not objected to a notification by Customer that it does not accept PDMt's terms and conditions and declares its own terms and conditions applicable.

1.3. If PDMt does not in all events demand strict observance of these terms and conditions, that does not mean these terms and conditions should not be applicable or that PDMt should forfeit the right to demand strict observance of these terms and conditions in future cases, similar or otherwise.

### 2. Offers

2.1. All offers are free of engagement, also if they state a period of time, unless expressly stated otherwise.

2.2. Information supplied by PDMt in the form of printed matter, brochures and so on, is subject to change without notice by PDMt and will not be considered a quotation.

### 3. Agreements

3.1. PDMt is not bound by any offers or other declarations, no matter how these are designated, made to Customer, until PDMt has issued an order confirmation or a sales contract has been concluded by the parties.

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3.2. Supplements to agreements and any additional arrangements or modifications made afterwards as well as written or oral arrangements and/or promises by employees, representatives or agents will only be binding for PDMt if those have been confirmed in writing by PDMt.

3.3. If Customer's solvency is reason to do so, PDMt may demand security, failing which PDMt has the right to suspend performance of the agreement.

### 4. Prices and rates

4.1. Unless stated otherwise, all prices and rates are in EURO and exclusive of VAT and any other levies the authorities may impose at the time of the acceptance of the order and shipping charges.

4.2. Special additional customs clearance costs and/or import duties are not included in the price and these are for the account of Customer.

4.3. Prices are based on prices, exchange rates, wages, taxes, duties, levies etc. as applicable at the time of the quotation. In the event that after conclusion of the agreement one or more of the cost price factors referred to above should change, PDMt has a right to modify the agreed price accordingly.

4.4. Prices are exclusive of the work which accrues as a result of the materials and services provided by Customer are insufficient and overtime work which accrue as a result of the work having to be completed within a shorter time frame than usual.

4.5. Customer shall reimburse PDMt for all expenses that are attributable or properly allowable to the Services provided to Customer. This includes transportation and accommodation expenses. Travel time is billed at 50 per cent of the quoted rate for the PDMt services.

### 5. Terms of delivery

5.1. Orders are delivered Incoterms 2010 EXW (Ex-Works), unless agreed differently, whereas Customer, from the point in time when the order is processed and ready for delivery, will bear all risks and costs of delivery, including shipping costs.

5.2. Any assembly and/or installation work will in all events be charged to Customer at the then applying rates unless expressly agreed differently in writing.

5.3. Statements of delivery periods in offers, confirmations and/or contracts are made to the best of knowledge and will be observed in so far as possible. PDMt is not obliged to observe delivery periods that can no longer be observed due to circumstances that have changed since the conclusion of the agreement.

5.4. The period within which or the time at which PDMt must have completed the agreed works or the agreed deliveries, has been determined in the expectation that the circumstances under which delivery or commissioning will take place, are not going to change after acceptance of the order.

5.5. If it has been agreed that the works and/or delivery will take place in stages, PDMt may postpone the start of the works and/or deliveries for a certain stage, until Customer has approved completion of the previous stage in writing and has fulfilled all its financial obligations as regards the partial delivery.

### 6. Delays

6.1. To the extent PDMt has confirmed or indicated a delivery date, this is subject to the reservation that PDMt has the right to postpone the delivery date, in case the postponed delivery is substantiated by reasons beyond PDMt's control, such as delays from subsuppliers, illness among key employees assigned to the delivery, resignation from key employees assigned to the delivery, Customer's insufficient delivery etc. If PDMt due to such circumstances are forced to replace key employees, PDMt shall ensure that Customer is not charged for any expenses related specifically to this.

6.2. In case PDMt wishes to postpone the delivery date, PDMt shall provide Customer with a written notice thereof no later than 14 days prior to the agreed delivery date.

6.3. In case of delayed delivery, PDMt is obligated to advise Customer thereof. In case of significant delays in delivery, by which is meant a delay of 90 days or more, which can solely be ascribed to PDMt, Customer is entitled to demand delivery within 30 days. If PDMt fails to deliver within this deadline, Customer is, within 8 days of the deadline, entitled to dissolve the agreement and return the purchased software to PDMt.

6.4. PDMt accepts no liability for Customer's potential losses as a result of lacking of delayed deliveries regardless of the extent of the loss.

### 7. Terms of payment

7.1. All invoices must be paid by Customer in accordance with the payment conditions stated on the invoice. If no specific conditions are stated, Customer must pay within 30 days after invoice date (net 30).

7.2. The claim for payment of the entire outstanding amount is in all events directly payable at overdue payment of an agreed instalment on the due date, if Customer files or has filed a petition for liquidation, suspension of payment or placement under receivership, in the event of any attachment on purchaser's goods or claims, and if purchaser dies, enters into liquidation or - if being a legal entity - is dissolved.

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7.3. If payment has not yet been received after the lapse of a further term of payment stipulated by registered letter, Customer will also be liable for all judicial and extrajudicial collection costs, including those for lawyers, attorneys-of-record, bailiffs and debt-collection agencies. Parties set the extrajudicial collection costs at a fixed amount of at least 15% of the principal amount, increased by the already due interest for late payment and with a minimum of € 350 exclusive of VAT.

7.4. PDMt shall retain title of the delivery until payment for the delivery has been made in full by Customer. PDMt is entitled to revoke the delivery in case Customer fails to observe any of these Terms of payment.

### 8. Project leader

8.1. Customer's project leader has access to support via telephone and e-mail during PDM Technology ApS' opening hours in connection with test and installation of the delivered software.

8.2. It is Customer's responsibility that Customer's project leader available for project activities to the extent PDMt deems necessary until the project has been delivered, approved and paid for. In case Customer wishes to replace the project leader with another before the project is approved and paid for, PDMt reserves the right to invoice the, by PDMt assessed, additional consumption of resources along with the right to revise the project time schedule as a result of the replacement of the project leader.

### 9. Modification and cancellation of orders

9.1. Cancellations or reductions of orders are subject to PDMt's prior written approval. In case of the cancellation or reduction of an order, PDMt is entitled to invoice Customer for the costs incurred and work performed up until that point in time in accordance with PDMt's standard rates.

### 10. Standard software developed by third parties

10.1. Standard software developed by third parties not hired to develop on behalf of PDMt and delivered by PDMt is delivered "as is". The same applies if PDMt's delivery is based on a platform consisting of standard software developed by a third party.

10.2. Standard software developed and produced by others than PDMt is subject to separate license terms to which Customer is referred.

10.3. Under no circumstance is PDMt liable for any direct or indirect damages and losses that may arise as a consequence of the poor quality, performance and applicability of delivered software developed by third parties.

### 11. Installation of software and hand-over testing

11.1. When PDMt has finished the installation of software, PDMt will conduct a hand-over test which will document that the hardware and software has been installed and delivered in accordance with the agreement giving Customer a minimum of one (1) week's prior written notice.

11.2. During the hand-over test, the software shall be tested under production-like conditions and Customer shall make available its own data and resources for this purpose.

11.3. If Customer fails to partake in the hand-over test, PDMt will conduct the test as if the Customer had taken part.

11.4. It is Customer's responsibility that all, including less frequently used, features of the software are tested properly.

11.5. PDMt reserves the right to make adjustments/modifications to the software during the handover test, given that this does not interrupt the hand-over test significantly.

11.6. After completed hand-over test, the hand-over test protocol must be audited by Customer and PDMt with the purpose of outlining a plan for remedying potential flaws in the software established during the hand-over test.

11.7. The hand-over test is considered approved by Customer when the hand-over test has been completed without qualified flaws cf. Section 11.10. In case Customer chooses to go live with the software prior to the approval of the hand-over test, the hand-over test is considered approved.

11.8. When the hand-over test has been approved cf. Section 11.7, Customer is required to sign a hand-over declaration prepared by PDMt.

11.9. In case of flaws being established during the hand-over test, which will adversely affect the daily operations of the Customer cf. Section 11.10, PDMt is entitled and obligated to remedy these. When PDMt has remedied such potential flaws, PDMt will invite Customer to partake in another hand-over test following the same procedure as for the initial hand-over test. The procedure is repeated until the hand-over test has been approved.

11.10. By a qualified flaw or deficiency is meant an error which implies that the software's primary application is not possible and that it is not possible to circumvent the error by following PDMt's directions. Significant errors shall be remedied without unnecessary delay.

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### 12. Complaints

12.1. Any complaints, both for services rendered and/or works and/or products, must be submitted in writing to PDMt within 30 days from the receipt date of the invoice, accurately stating the facts to which the complaints refer. If filed complaints do not satisfy the above, they can no longer be accepted and Customer will be considered to have approved the delivered goods and/or services. Hidden defects are subject to a term of 90 days after Customer go live of the ("Customer go live" means the date Customer approves a hand over test or uses the products or parts thereof in a production environment).

12.2. Complaints about invoices must also be submitted in writing and within 30 days after the receipt date of these invoices.

12.3. After the lapse of these terms Customer will be considered to have approved the supplied goods or services, respectively the invoices, after which the right to complain lapses. In no event will submitting a complaint release Customer from its payment obligations towards PDMt.

### 13. Liability

13.1. PDMt accepts legal obligations for indemnification in so far as appears from this article.

13.2. PDMt's total liability for imputable failure in the performance of the agreement remains limited to indemnification of direct damage to an amount not exceeding the price stipulated for that agreement (exclusive of VAT). If the agreement is mainly a continuing performance contract of more than one year, the stipulated price is set at the total of the fees (exclusive of VAT) stipulated in one year. In no event will the total compensation for direct damage amount to more than € 100.000.

Direct damage exclusively includes:

The reasonable cost Customer should have to make to ensure that PDMt's performance satisfies the agreement. However, this damage will not be indemnified if Customer has dissolved the agreement.

Reasonable costs incurred to determine the cause and scope of the damage in so far as this determination refers to direct damage in the meaning of these conditions.

Reasonable costs incurred to determine the cause and scope of the damage in so far as Customer demonstrates that these costs have resulted in a limitation of the direct damage in the meaning of these conditions.

13.3. PDMt's liability for indirect damage, including consequential damage, lost profit, lost savings and losses due to interruption of operations, is excluded. For instance, PDMt is not liable for costs and losses due to corruption, destruction or loss of files, data and other information carriers of Customer. Customer will at all

times be deemed to possess readable copies of the files, data and other information carriers and, consequently, is responsible for making and at all times possessing readable backups.

13.4. If the delivery entails PDMt working with any of Customer's software applications, PDMt is not liable for potential damages, losses or loss of data, if this is a result of Customer not having backed up these data.

13.5. Customer is entitled to determine whether the delivery shall be installed in a test environment or in a live environment. If the delivery is installed in a live environment, Customer is responsible for the damages the delivery may cause to Customer's data and software applications.

13.6. At all times a precondition for the existence of any right to damages is that Customer reports the damage in writing to PDMt as soon as possible after it arose.

13.7. Customer safeguards PDMt from all claims by third parties for product liability due to any deficiency in a product and system supplied by Customer to a third party and that also consisted of equipment, software or other materials supplied by PDMt, except if and in so far as Customer demonstrates that the damage was caused by that equipment, software or other materials. PDMt does not accept any liability in the event of failure to perform or to timely, fully or properly perform in any way, without prejudice to PDMt's right to still perform as stipulated by Customer, in so far the law allows.

### 14. Force majeure

14.1. Force majeure at least includes delays at or default by our suppliers, impossibility to deliver due to government order or legal regulation, impossibility to deliver through fault or intention on the part of people employed by PDMt or whose services PDMt uses, war, threat of war, irrespective of the question whether Denmark is directly involved, fire or other destruction in our business, complete or partial interruption of the transport system and malfunction of machines and/or tools or other faults in our business or the business of our suppliers.

14.2. PDMt is not liable for the lack of ability to comply with its obligations if PDMt can document that this is caused by force majeure.

14.3. In the event of force majeure - even though this circumstance was foreseeable at the time the agreement was concluded or the order was obtained - making it temporarily impossible for PDMt to perform the agreement or to carry out the order, PDMt has the right, without judicial intervention, to either suspend the performance of the agreement for the duration of the obstruction, or to dissolve the agreement, without PDMt being liable for any damages or penalty.

14.4. In the event of force majeure, Customer does not have the

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right to claim dissolution of the agreement or to withdraw the order issued to PDMt.

14.5. If and in so far as PDMt is not able to perform its obligations due to force majeure, Customer will not have to pay the matching parts of the agreed price.

14.6. If the force majeure has continued for three months, or if it is certain that the force majeure will continue for more than six months, both parties may prematurely terminate the agreement without observance of any term of notice, provided that such premature termination is no longer possible after the agreement of which the performance was temporarily prevented by force majeure, has still been performed. In the event of premature termination because of force majeure, Customer still has to pay the parts of the agreed price that are due periodically or in advance, for the period until the moment the force majeure situation arose.

## 15. Title

15.1. PDMt and its licensors have full copyright of all software delivered to Customer which are protected with reference to international copyright laws.

15.2. Customer shall attain no rights to PDMt's and/or its licensors' intellectual property through the purchase and/or installation of any software, system or program delivered by PDMt.

15.3. Customer shall not break or change any security codes and shall not remove any statements in the software regarding intellectual property rights, trade marks and/or other rights.

15.4. If the delivery consists of a programming task, the receiver of the task may freely make copies of the relevant parts of the system in which the programming concerns. These copies are for internal use only and may not be shared with third parties.

15.5. Such programming tasks are delivered with source code for the relevant parts of the system which the programming concerns. Libraries containing parts of the programs are co-delivered in the form of object code. If the co-delivered libraries or standard systems require separate licenses or similar for copying, this is excluded from this agreement and it is the responsibility of Customer that the required licenses are acquired.

15.6. If the delivery is a standard program, the program and program documentation may be copied in accordance with the terms stipulated in the associated license agreement.

15.7. If the delivery is a report, the report may not be copied and/or made public unless prior written permission by PDMt has been obtained.

15.8. PDMt reserves all industrial and intellectual property rights

to supplied materials, software and the inventions, drawings, models and copyrights contained therein.

15.9. Customer will refrain from renting out programs or issuing them in loan, nor copy, modify or reproduce the programs. Customer will impose a similar obligation upon intermediaries and employees.

## 16. Product information

16.1. Technical specifications and other materials provided to Customer by PDMt are only for guiding purposes and PDMt accepts no responsibility for any inaccuracies therein. Any information in such materials is only binding if this is agreed expressly between the parties.

## 17. Source Code

17.1. Source code for the software developed and delivered by PDMt, to which PDMt holds the intellectual property rights, is available to Customer in case of PDMt filing for bankruptcy or PDMt ceasing its business activities for other reasons on the precondition that it is not possible to secure a continuous support of the software under normal circumstances.

17.2. This only applies to the parts of the software being used by Customer.

17.3. All title and rights to the software shall in such event remain with PDMt.

## 18. Assignment of obligations

18.1. Neither of the parties are entitled to transfer their rights and obligations of any agreements including these General Terms and Conditions of Sale and Delivery to any third party.

18.2. PDMt and Customer are however entitled to transfer their rights in case either PDMt or Customer enters into a corporate restructuring such as a merger, acquisition or similar. It is a precondition that the party transferring the rights shall be liable for the party receiving the rights ability to comply with the obligations under the agreement between the PDMt and Customer and these General Terms and Conditions of Sale and Delivery.

## 19. Applicable law and venue

19.1. Any matters of law between PDMt and Customer are exclusively governed by the Laws of the Kingdom of Denmark without regards to its conflicts and law provisions.

19.2. Any legal action brought concerning any agreement between Customer and PDMt or any dispute hereunder shall be brought only in the Maritime and Commercial Court of Copenhagen, Denmark.