

**I. Application of the International Conditions of Sale**

1. These International Conditions of Sale apply to all customers of PRO-KLIMA LLC, Samobor, Gradna 78E, Croatia - hereinafter referred to as PRO-KLIMA - whose relevant place of business is **not in Croatia**. For customers whose place of business is in Croatia, the General Conditions of Sale of PRO-KLIMA apply, which will be forwarded on request. In each case, the relevant place of business is the one which concludes the contract in its own name.
2. These International Conditions of Sale apply to the present and all subsequent contracts whose preponderant object is the **supply of goods** to the customer. Additional obligations assumed by PRO-KLIMA do not affect the application of these International Conditions of Sale.
3. Conflicting or differing **terms of business of the customer** do not bind PRO-KLIMA, even if PRO-KLIMA does not explicitly object or even if PRO-KLIMA renders performance or accepts the customer's performance without reservation irrespective of conflicting or differing terms of business of the customer. The provisions of this paragraph equally apply insofar as the terms of business of the customer, irrespective of the contents of these International Conditions of Sale, deviate from legal provisions.

**II. Formation of the Contract of Sale**

1. The customer is under an obligation to give **written notice to PRO-KLIMA** prior to the formation of a contract if the goods ordered are to be fit not only for normal use or will be used in circumstances which are unusual or which present a particular risk to health, safety or the environment, or which require more demanding use.
2. **Orders of the customer** are to be put in writing. If the customer's order deviates from the proposal or the tender submitted by PRO-KLIMA, the customer will emphasize the differences as such.
3. All orders, in particular also those received by employees of PRO-KLIMA, will **only have effect if followed by a written acknowledgement** of the order by PRO-KLIMA. The delivery in fact of the goods ordered, any other conduct of PRO-KLIMA or the conduct of the customer to assume the formation of the contract of sale, PRO-KLIMA can dispatch such written acknowledgement of the order up to and including **14 calendar days after** the customer's order has been received by PRO-KLIMA. Until this time, the customer's order is irrevocable.
4. The written **acknowledgement of the order** has been **received in time**, if it is received by the customer within 14 calendar days after its date of printing. The customer will inform PRO-KLIMA without delay, if the written acknowledgement of the order is received delayed.
5. The written acknowledgement of the order by PRO-KLIMA determines the entire **contents of the contract** and effects a **conclusion of the contract** even if - except for the purchase price and the quantity to be delivered - the written acknowledgement deviates in any other way, especially with respect to the exclusive application of these International Conditions of Sale, from the declarations of the customer. Particular wishes of the customer, namely warranties or guarantees with respect to the goods or the performance of the contract therefore require express written confirmation in every case. Regardless of the nature and extent of the deviations, the contract will only fail to come into existence if the **customer objects to the deviations in writing** and the objection are received by PRO-KLIMA within a short time, at the latest seven calendar days after receipt of the written acknowledgement of the order by the customer.
6. PRO-KLIMA's **employees**, commercial agents or other sales intermediaries are not authorized to dispense with the requirement for written acknowledgement of the order or to make promises which differ from its content or guarantees. **Changes to the concluded contract** likewise require written confirmation by PRO-KLIMA.

**III. Obligations of PRO-KLIMA**

1. Subject to an exemption according to section VII.1. b) PRO-KLIMA must **deliver the goods** specified in the written acknowledgement of the order. PRO-KLIMA is **not obliged to perform obligations** not stated in the written acknowledgement of the order or in these International Conditions of Sale, in particular PRO-KLIMA is under no obligation to deliver accessories not listed explicitly, to install additional safety devices, to carry out assemblies, to render planning-services or to advise the customer, unless agreed specifically/additionally.
2. Third parties not involved in the conclusion of the contract, in particular the **customer's clients**, are not entitled to request delivery to be made to them, unless agreed specifically/additionally. The customer's responsibility to take delivery continues to exist even if he **assigns claims to third parties**.
3. PRO-KLIMA undertakes to deliver **goods of average kind and quality** taking account of the tolerances customary in trade as in kind, quantity, quality and packaging. If the goods cannot be delivered in the condition as offered at the time of the formation of the contract because technical improvements to goods of series production were made, PRO-KLIMA is entitled to deliver the goods with the technical improvements. PRO-KLIMA is entitled to make **part deliveries**.
4. If further **specification** is required in relation to the goods to be delivered, PRO-KLIMA will carry this out having regard to its own and the identifiable and legitimate interests of the customer. A request to the customer to specify the goods, or to participate in the specification, is not required. PRO-KLIMA does not undertake to inform the customer of the specification it has made or to give the customer the option of a differing specification.
5. PRO-KLIMA undertakes to place the goods at **disposal for collection by the customer** at the agreed time of delivery at the place of delivery indicated in the written acknowledgement of the order or by way of precaution at its premises in Samobor/Croatia. Previous separation or marking of the goods or notification to the customer of the goods being placed at disposal is not required. However, PRO-KLIMA is entitled to initiate the shipment of the goods at the customer's risk and expense in order to obtain the document in proof of tax-free-delivery.
6. **Agreed delivery time periods or delivery dates** are subject to the customer's procuring any required documents, releases, permits, approvals, licenses or any other authorizations or consents in sufficient time, opening letters of credit and making down-payments as agreed and performing all other obligations incumbent upon him properly and in good time. Moreover, agreed delivery time-periods begin on the date of the written acknowledgement of the order by PRO-KLIMA. PRO-KLIMA is entitled to deliver earlier than at the agreed delivery time.
7. Without prejudice to its continuing legal rights, PRO-KLIMA is entitled to fulfill its obligations **after the delivery time agreed upon**, if it informs the customer of exceeding the delivery time limit and of the time period for late performance. The customer can object to late performance within a reasonable time period, if the late performance is unreasonable. An objection is only effective, if it is received by PRO-KLIMA before commencing late performance. PRO-KLIMA will reimburse necessary additional expenditure, proven and incurred by the customer as a result of exceeding the delivery time to the extent that PRO-KLIMA is liable for this under the provisions laid down in section VII.
8. **Risk as to price and performance** even of goods not being clearly identifiable to the contract and without being necessary a notice given by PRO-KLIMA, passes to the customer at the latest as soon as loading of the goods has begun or as soon as the customer does not take delivery in accordance with the contract or title of the goods has passed to the customer. The **loading of the goods** is part of the customer's obligations. The agreement of **INCOTERMS** in Group F or Group C or of clauses such as "delivery free....." or such like merely involves a variation of the provisions as to transportation costs; besides, the provisions laid down in these International Conditions of Sale including those referring to the passing of risk continue to apply.
9. PRO-KLIMA is not obliged to obtain any licences, authorizations, certificates, formalities or other **documents** necessary for the export, transit or import, unless agreed specifically/additionally. However, PRO-KLIMA renders at the customer's request, risk and expense every assistance in obtaining the documents that the customer has required in writing.
10. Including where INCOTERMS in Group F are agreed, **PRO-KLIMA is in particular not obliged** to arrange for shipment of the goods, to insure the goods, to procure certificates or documents not expressly agreed, to procure customs clearance, to bear levies, duties and charges accruing outside Samobor/Croatia, to comply with weight and measuring systems, packaging, labelling or marking requirements applicable outside Samobor/Croatia, to inform the customer of the delivery or to take back packaging material from the customer. Irrespective of any legal provision, the customer shall at its own cost take care of renewed utilization, material recycling or otherwise prescribed waste-disposal. The foregoing provision applies irrespective of whether the packaging material is invoiced separately or not to the customer.
11. Without prejudice to its continuing legal rights, PRO-KLIMA is entitled to **suspend the performance of its obligations** so long as, in the opinion of PRO-KLIMA, there are grounds for concern that the customer will wholly or partly fail to fulfill its obligations in accordance with the contract. In particular, the right to suspend arises if the customer insufficiently performs its obligations to enable payment to PRO-KLIMA or a third party or pays late. PRO-KLIMA is not required to continue with performance of its obligations, if an assurance given by the customer to avoid the suspension does not provide adequate security or could be challenged pursuant to an applicable law.
12. Except as provided in section III.7., PRO-KLIMA is only obliged to inform the customer of **delay or non-performance** as soon as these are certain.

**IV. Price, Payment and Acceptance of the Goods**

1. Irrespective of continuing obligations of the customer to guarantee or to enable payment, the customer undertakes to pay the **agreed price** in the currency specified in the written acknowledgement of the order transferring it without deduction and free of expenses and costs to the financial institution designated by PRO-KLIMA. To the extent that a price has not been agreed, the contract has nevertheless been validly concluded; in such a case the price which is at the agreed time of delivery PRO-KLIMA's usual price will apply. PRO-KLIMA's employees, commercial agents or other sales intermediaries are not authorized to accept payments.
2. The payment to be made by the customer is in any event **due for payment** at the time specified in the written acknowledgement of the order. The due time for payment arises without any further pre-condition and, in particular, does not depend on whether the customer has already taken delivery of the goods and/or the documents and/or has had an opportunity to examine the goods. The **periods granted for payment** will cease to apply and outstanding accounts will be due for immediate payment, if insolvency proceedings relating to the assets of the customer are applied for, if the customer without providing a justifiable reason does not meet fundamental obligations due towards PRO-KLIMA or towards third parties or if the customer has provided not accurate information regarding his credit standing.
3. The customer warrants that all legal requirements for delivery free of **Croatian value added tax** will be fulfilled. To the extent that PRO-KLIMA does not receive the document in proof of tax-free-export-delivery or PRO-KLIMA is called upon to pay the value added tax as a result of the terms of delivery or of circumstances allocable to the customer, the customer will indemnify PRO-KLIMA in all and every respect without prejudice to any continuing claim by PRO-KLIMA. The indemnity is granted by the customer waiving any further requirements or other defences, in particular waiving the defence of limitation or prescription and also includes the reimbursement of the expenses incurred by PRO-KLIMA.
4. Regardless of currency and regardless of the jurisdiction of any court, PRO-KLIMA is entitled at its own discretion to **set off** incoming payments against claims existing against the customer by virtue of its own or assigned rights at the time of payment.
5. Any rights of the customer to **set-off** against claims of PRO-KLIMA are excluded, except where the corresponding claim of the customer is in the same currency, is founded in the customer's own right and has either been finally judicially determined or is undisputed or acknowledged by PRO-KLIMA in writing.
6. Any rights of the customer to **suspend payment** and to **raise defences** are excluded, except where despite written warning PRO-KLIMA has committed a fundamental breach of its obligations arising out of the same contractual relationship and has not offered any adequate assurance.
7. The customer undertakes to take delivery of the goods at the delivery time without taking any additional period of time and at the place of delivery indicated in the written acknowledgement of the order or by way of precaution at the premises of PRO-KLIMA in Samobor/Croatia. The customer is only entitled to refuse to **take delivery** if it exercises - in accordance with the rules in section VI.1. - its rights to avoid the contract.

**V. Delivery of non-conforming Goods or Goods with Defective Title**

1. Delivery does **not conform with the contract** if, taking into account the terms in section III., at the time the risk passes the packaging, quantity, quality or the description of the goods is significantly different to the specifications laid down in the written acknowledgement of the order, or in the absence of agreed specifications, the goods are not fit for the purpose which is used in Croatia. Irrespective of the legal requirements applicable in Croatia, the delivery conforms to the contract, to the extent that the legal requirements applicable at the place of business of the customer do not impede the usual use of the goods. Second-hand goods are delivered without any liability for their conformity.

2. To the extent that the written acknowledgement of the order does not contain an explicit statement to the contrary, PRO-KLIMA is in particular **not liable** for the goods being fit for the purpose to which the customer intends to put them or for possessing the qualities of a sample or a model or for their compliance with the legal requirements existing outside of Croatia, for instance in the customer's country. PRO-KLIMA also shall not be liable for any non-conformity with the contract occurring after the time the risk has passed. To the extent that the customer, either himself or through third parties, initiates the removal of non-conformities without the prior consent of PRO-KLIMA, PRO-KLIMA will be released from its liability.
3. In the case of sales with delivery included, the customer must **examine the goods** as required by law and in so doing check every single delivery in every respect for any discoverable or typical lack of conformity with the contract. Therefore, the customer is obliged to examine the goods during/after the unloading and to determine any visible damage. If damage has occurred in transportation, the customer is obliged to make record of damage or to make a note of damage to the cargo sheet (CMR). The customer commits to take all necessary actions in order to have the subject record contain a signature of the carrier who acknowledges that everything that is written in the record/note of the damage or to confirm that the cargo sheet (CMR) corresponds to the recorded situation. The customer is obliged to take a picture of the damage at the time of the damage record or notice on the cargo sheet (CMR) and inform the Seller of the above-mentioned information on the same day.
4. The goods delivered have a **deficiency in title** if they are not free from enforceable rights or claims of third parties at the time risk passes. Without prejudice to further legal requirements, third parties' rights or claims founded on industrial or other intellectual property constitute a deficiency in title only to the extent that the rights are registered and made public in Croatia. Irrespective of the legal requirements applicable in Croatia, the goods are not with defective title, to the extent that the legal requirements applicable at the place of business of the customer do not impede the usual use of the goods.
5. The customer shall give **notice** as required by law to PRO-KLIMA of any lack of conformity with the contract or of any deficiency in title, and in any event directly and in writing. PRO-KLIMA's employees, commercial agents or other sales intermediaries are not authorised to accept **notices** or to make any statements concerning lack of conformity with the contract or of title and its consequences.
6. Following **due notice** according to section V.5., the customer can rely on the remedies provided for by these International Conditions of Sale. The customer has no other rights or claims whatsoever. The customer's claims for a deficiency in title will be time-barred according to the same rules as the claims for delivery of non-conforming goods. In the event of **notice not having been properly given**, the customer may only rely on remedies if PRO-KLIMA has fraudulently concealed the lack of conformity with the contract or the deficiency in title. Statements by PRO-KLIMA as to the lack of conformity with the contract or as to the deficiency in title are for the purpose of explaining the factual position only, but do not entail any waiver by PRO-KLIMA of the requirement of proper notice.
7. In accordance with the terms of the UN Sales Convention, the customer is entitled to demand **delivery of substitute goods or repair or to reduce the purchase price**. Further claims for performance are not available to the customer. Irrespective of the customer's remedies, PRO-KLIMA is always entitled in accordance with the provision in section III.7. to **repair goods** which do not conform with the contract or to supply substitute goods.

**VI. Termination of contract**

1. Without prejudice to compliance with the respective applicable legal requirements, the **customer** is only entitled to declare the contract avoided after he has **threatened PRO-KLIMA with avoidance of the contract in writing** and an additional period of time of reasonable length for performance fixed in writing has expired to no avail. If the customer claims delivery of substitute goods, repair or other performance, he is bound for a reasonable period of time to the chosen remedy, without being able to exercise the right of declaring the contract avoided. In any event, the customer must give notice of avoidance of the contract within a reasonable time in writing and to PRO-KLIMA directly.
  2. Without prejudice to its continuing legal rights, **PRO-KLIMA** is entitled to avoid the contract in whole or in part without compensation if the customer objects the application of these International Conditions of Sale, if the written acknowledgement of the order is received by the customer more than 14 calendar days after its date of printing, if insolvency proceedings relating to the assets of the customer are applied for or commenced, if the customer without providing a justifiable reason does not meet fundamental obligations due towards PRO-KLIMA or towards third parties, if the customer has provided not accurate information regarding his credit standing, if PRO-KLIMA through no fault of its own does not receive supplies properly or on time, or if for other reasons PRO-KLIMA cannot be expected to fulfill its obligations by means which taking into consideration its own interests and that of the customer as far as ascertainable and legitimate at the time of formation of the contract, are unreasonable in particular in relation to the agreed counter performance.
- VI.1. Damages**
1. Apart from liability for damage to natural persons, **PRO-KLIMA** is only obliged to pay damages **pursuant to this contract or extra contractually** if the following provisions in a) to f) are fulfilled:
    - a) The customer is required in the first instance to **rely on other remedies** and can only claim damages in the event of a continuing deficiency. The customer cannot claim damages as an alternative to other remedies.
    - b) **PRO-KLIMA is not liable** for the conduct of suppliers or subcontractors or for damages to which the customer has contributed. PRO-KLIMA is also not liable for impediments which occur as a consequence of natural or political events, acts of state, industrial disputes, sabotage, accidents, biological, physical or chemical processes or similar circumstances and which cannot be controlled by PRO-KLIMA with reasonable means. Besides, PRO-KLIMA is only liable if it negligently breaches fundamental or deliberately or in circumstances amounting to gross negligence breaches other obligations owed to the Customer.
    - c) In the event of liability PRO-KLIMA will compensate within the limits of lit. d) the proven **loss** of the customer to the extent that it was unavoidable for the customer and **foreseeable** to PRO-KLIMA at the time of the formation of the contract with respect to the occurrence of the loss and its amount. The customer must **advise** PRO-KLIMA in writing before formation of the contract of particular risks, atypical possibilities for damages and unusual amounts of loss. Moreover, the customer is required to **mitigate his loss** as soon as a breach of contract is or ought to be known.
    - d) PRO-KLIMA is **not liable** for loss of profit, non-pecuniary losses or other indirect damages. Besides, the **amount of damages** for late delivery is limited to 0.5 % for each full week of delay, up to a maximum of 5 %, and for other breaches of obligations is limited up to 200 % of the respective delivery value. However, this subparagraph does not apply in case of gross negligence by the executive bodies or the management.
    - e) For the limitation of time, the general regulations of the Croatian substantial law are valid.
  2. To the extent that the claim is not time-barred earlier, a **six-month preclusive limitation of time** for bringing an action for damages applies, starting with the rejection of the claim for damages.
  2. Irrespective of continuing legal or contractual claims of PRO-KLIMA and subject to the customer providing proof that damages have not occurred at all or clearly do not reach this extent, the **customer** is obliged towards PRO-KLIMA to pay **liquidated damages** as follows without PRO-KLIMA having to provide proof of the amount:
    - a) In the event of **delay in payment** the customer will pay the costs of judicial and extra-judicial means and proceedings, usual and accruing within the country and abroad, as well as interest at the rate applicable in Croatia, in accordance with Financial Business and Pre-Bankruptcy Settlement Act.
    - b) In case the customer does **not accept delivery on the due date**, PRO-KLIMA is obliged to store it properly and is entitled to claim holding costs in the amount of 0,5 % of the respective delivery value for each day of delay (up to 30 days maximum).
    - c) In case the customer does **not accept delivery at all** (more than 30 days of delay), risk passes to the customer and PRO-KLIMA is not obliged to store goods anymore. In that case, provisions regarding holding costs also apply (up to 30 days maximum).

**VII. Other Provisions**

1. **Title of the goods** which have been delivered **remains with PRO-KLIMA** until settlement of all claims by PRO-KLIMA existing against the customer. The allocation of risk as to price and performance in section III.8. is not affected by the reservation of title.
2. Without prejudice to PRO-KLIMA's continuing claims, the customer will indemnify PRO-KLIMA without limit against all claims of third parties which are brought against PRO-KLIMA on the grounds of **product liability** or similar provisions, to the extent that the liability is based on circumstances which - such as, for example, the presentation of the product - were caused after risk passed, by the customer or other third parties without express written consent of PRO-KLIMA. In particular, the indemnification also includes compensation for expenses incurred by PRO-KLIMA and is granted by the customer waiving further conditions or other objections, in particular without requiring compliance with control and recall obligations and waiving any defence of limitation.
3. In relation to pictures, drawings, calculations and other **documents** as well as computer-software, PRO-KLIMA reserves all proprietary rights, copyrights, other industrial property rights as well as know-how rights.
4. All communications, declarations, notices etc. are to be drawn up exclusively in the **English language**, unless agreed specifically/additionally. Communications by means of fax or e-mail fulfill the requirement of being in writing.

**IX. General Basis of Contracts**

1. The **place of performance** and payment for all obligations arising from the legal relationship between PRO-KLIMA and the customer is Samobor/Croatia. In particular, this provision also applies if PRO-KLIMA assumes the costs of money remittance, renders performance for the customer somewhere else or payment is to be made in exchange for documents or goods or in the case of restitution of performances already rendered. The agreement of **INCOTERMS** in Group F or Group C or agreements as to how costs are to be borne do not entail any change of the above rule as to place of performance. PRO-KLIMA is entitled to require payment also at the place of business of the customer.
2. The **United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods (UN Sales Convention)** (CISG) in the English version as well as the usage in force in Croatia govern the legal relationship with the customer. The UN Sales Convention applies, above and beyond its own area of application, and regardless of reservations adopted by other states, to all contracts to which these International Conditions of Sale are to be applied according to the provisions of section I. Where standard terms of business are used, the **INCOTERMS** © 2010 of the International Chamber of Commerce apply taking into account the provisions stipulated in these International Conditions of Sale.
3. The **formation of contract**, including agreements as to jurisdiction and the inclusion of these International Conditions of Sale, and the **rights and obligations of the parties**, also including pre-contractual and collateral obligations, as well as the interpretation are exclusively governed by the UN Sales Convention together with these International Conditions of Sale. Outside the application of the UN Sales Convention, i.e. in case when CISG or these International Conditions of Sale do not regulate a certain subject, the contractual and non-contractual legal relationship between the parties is governed by Croatian substantive law.
4. All contractual and extra-contractual disputes arising out of or in connection with contracts to which these International Conditions of Sale apply, shall be finally settled by **arbitration** according to the Rules of the German Institution for Arbitration (DIS) without recourse to the ordinary courts of law. The tribunal shall consist of three arbitrators. The place of the arbitration shall be Munich, the languages to be used in the arbitral proceedings shall be German and English. In individual cases, however, PRO-KLIMA is entitled also to bring an action before the national Courts at the customer's place of business, or other national Courts having jurisdiction according to domestic or foreign law.
5. If provisions of these International Conditions of Sale should be or become partly or wholly void, the remaining arrangements will besides continue to apply. The parties are bound to replace the void arrangement by a legally valid arrangement, which comes as close as possible to the commercial meaning and purpose of the void arrangement.