

**General
Terms and Conditions
WaggonTracker**

PJ Messtechnik GmbH

Version November 2017

General Terms and Conditions PJ Messtechnik GmbH

1. General provisions

- 1.1. These contractual provisions shall apply to all legal transactions between PJ Messtechnik GmbH (hereinafter referred to as "PJM") and all natural and legal persons (hereinafter referred to as "buyer") with reference to the WaggonTracker product and the associated information services (WaggonTracker Portal).
- 1.2. PJM shall conclude contracts exclusively on the basis of these General Terms and Conditions. These Terms and Conditions shall always apply in their latest version at the time the contract was concluded.
- 1.3. Provisions that diverge from, contradict or complement these Terms and Conditions shall not be part of any contract, unless agreed expressly in writing and by PJM.
- 1.4. All agreements shall require the written form.

2. Quotes and order confirmation

- 2.1. All quotes provided by PJM are subject to change and non-binding.
- 2.2. PJM reserves the right to refuse an order without stating any reason.
- 2.3. All orders placed by the buyer shall be made in writing and signed by an authorised signatory.
- 2.4. Orders shall only be considered accepted by and contracts binding for PJM once a written order confirmation has been dispatched specifying the technical details.
- 2.5. Information provided in catalogues, brochures, price lists, displays at trade fair stalls, circulars, promotional material etc. as well as verbal information shall only be considered relevant if expressly declared to be part of the contractual content in the written order confirmation issued by PJM.
- 2.6. PJM shall duly fulfil the order placed on the basis of the generally recognised Code of Practice at the time of the conclusion of the contract and the principles of economic efficiency and sound financial management.

3. Prices

- 3.1. All prices are given in Euros, without sales tax and Ex Works (delivery warehouse) in accordance with the Incoterms 2010.
- 3.2. Loading, transport and shipping as well as customs procedures are completed at the buyer's risk.
- 3.3. In case additional or increased expenses occur due to a change in legal provisions between the conclusion of the contract and the delivery of the products, in particular with regard to customs or fluctuations of official exchange rates, PJM reserves the right to increase the agreed price accordingly.
- 3.4. Prices can increase in cases where the buyer violates his duties of cooperation, provided that this fact leads to additional costs. These additional costs are invoiced on a time and material basis plus a processing fee of 10%.
- 3.5. Any additional expenses arising from this contract and bank charges shall be paid for by the buyer.
- 3.6. If PJM, upon the buyer's request, installs the product or performs trainings on the buyer's behalf, such services shall be invoiced separately.
- 3.7. Where licence fees are charged for the use of GPS, these fees must be paid for by the buyer.
- 3.8. The buyer shall bear all costs for track and traction, shunting, maintenance and repair and is responsible for the work item's transfers and all transfer-related costs.
- 3.9. Bad weather days will be treated like downtime days through no fault of one's own. These are days that are charged if, due to certain weather conditions, no services can be performed and the PJM team must be present.
- 3.10. Basically, any additional services that are not included in the offer are charged at an hourly rate of € 120,- net.
- 3.11. Additional evaluation, documentation and reporting services as well as travel times are charged at an hourly rate of € 95,- net.
- 3.12. Travel costs are charged according to the actual expenditure plus a manipulation surcharge of 10% as follows:
 - Railway: 2nd class
 - Aeroplane: flight time up to 6 hours - economy class, more than 6 hours - business class
 - Car: mileage allowance € 0.50/km

- 3.13. Beyond the normal working hours, the following surcharge rates shall apply: night and Saturday work + 50%, Sunday/holiday work + 100%. According to the law, one working day comprises max. 10 hours and a working week max. 50 hours.
- 3.14. The prices are subject to indexation in accordance with the Austrian Index of Consumer Prices 2015 = 100 with the index published for the month in which the order is issued being taken as the basis for calculation. Index fluctuations will be taken into account where they exceed 5%; if the threshold value is exceeded, the change in the consumer price index is to be taken into account in its entirety. The new index value thus calculated will be the starting-point for the calculation of the next index adjustment. If the index ceases to be published, it will be replaced by the index which succeeds it. If no such successor index is published, the inflation allowance is to be calculated in such a way that it corresponds to the reduction in purchasing power.

4. Scope of services

- 4.1. Services rendered according to these Terms and Conditions refer to the supply of the WaggonTracker product, not including its installation in the bearing housing of a railway vehicle.
- 4.2. Support during the initial installation, including on-site training, is available. The buyer shall bear all additional expenses that arise in this context, such as transport, travel expenses etc.
- 4.3. In addition, access to customer-specific data shall be enabled via a web portal or other appropriate data exchange systems.
- 4.4. In all cases, the concluded contract shall constitute the basis for the scope of services to be rendered. Any change requests after the conclusion of the contract require a supplementary agreement with regard to delivery dates and pricing. Unforeseen additional efforts can lead to delivery date and price changes.
- 4.5. Objectively justified, minor changes to the services rendered by PJM that may reasonably be imposed on the buyer shall be understood as approved of in advance as long as form, fit and function are not affected.
- 4.6. Objectively justified partial deliveries and services shall be admissible and may be invoiced separately.
- 4.7. Unless otherwise agreed the project language shall be German.

5. Delivery times and dates

- 5.1. The delivery and/or service times and dates specified in the contract shall apply. Any change requests after the conclusion of the contract require a supplementary agreement with regard to delivery dates and pricing. Unforeseen additional efforts can lead to delivery date and price changes.
- 5.2. Compliance with delivery times on the part of PJM shall require the timely receipt of all data and documents to be supplied by the buyer as well as the buyer's fulfilment of the agreed payment obligations, any legal and technical prerequisites to be provided by the buyer and any other obligations that are required in order for PJM to render its services. If the buyer delays the fulfilment of such prerequisites, delivery times will lengthen accordingly.
- 5.3. In cases where the agreed time schedule changes after the conclusion of the contract due to circumstances that are not attributable to PJM, any additional costs resulting therefrom are invoiced on a time and material basis plus a processing fee of 10%. Among other things, this includes hotel cancellation fees, downtime days, futile business trips and rental charges.
- 5.4. PJM cannot grant a short-time availability for optional offer positions.
- 5.5. In cases of force majeure, strike, unpredictable events or delays on the part of our suppliers that are not the fault of PJM or in case of other comparable events beyond the sphere of influence of PJM, delivery times and dates shall be deferred accordingly.

6. Installation, commissioning, acceptance

- 6.1. For provisions regarding installation, commissioning and acceptance, please refer to the individual contract.

7. Payment conditions

- 7.1. All payments shall be made to the PJM bank account, IBAN AT622070604400058469, BIC KSPKAT2K.
- 7.2. One third of the payment shall be made as a down payment upon the conclusion of the contract. The remaining balance shall be paid net within 30 days from the date of the invoice. After this period, the buyer shall be considered in default without an additional reminder being required.
- 7.3. PJM shall have the right to issue exclusively electronic invoices.
- 7.4. Specific projects and customised orders are generally invoiced in partial amounts. Transport and travel costs are invoiced monthly.

- 7.5. Service charges shall be invoiced on a monthly, semi-annual or annual basis, depending on the individual agreements and must be paid in advance. Costs shall depend on the individual mobile service provider and shall thus be adjusted in case of changes to the prices of the mobile service provider in question.
- 7.6. In case of default of payment, also of a single instalment, any discounts granted (markdowns, reductions etc.) shall become null and void and shall be added to the invoice.
- 7.7. PJM reserves the right to charge default interest in accordance with the applicable legal provisions even in case of default of payment through no fault of the buyer's.
- 7.8. In cases of default of payment the buyer shall reimburse PJM for any expenses incurred in connection with reminders and collection of monies in cases where a debt-collection agency was consulted, in as far as such expenses were incurred to ensure adequate claims preparation.
- 7.9. Where PJM handles the debt collection process, the buyer shall be liable for a fee of EUR 5 per reminder.
- 7.10. If payment for data services and Internet access is not made even after several reminders, all access shall be blocked and the system put on hold. The costs for reactivation shall be borne entirely by the buyer.
- 7.11. If reactivation is not applied for within 6 months after the shutdown, the data service and Internet access shall be deactivated irreversibly.
- 7.12. If the buyer defaults on a payment within the framework of other contractual relations that exist with PJM, PJM reserves the right to put on hold the fulfilment of obligations from the latest contract until all other outstanding obligations on the part of the buyer have been met.
- 7.13. The buyer shall not have any right to retain or set off payments on the basis of counterclaims that have not been recognised by PJM or by a legally binding court order.

8. Buyer's duty to cooperate

- 8.1. The buyer shall be liable for ensuring that all structural, technical and legal prerequisites that are required for the provision of services are complied with.
- 8.2. The buyer shall, at his expense, ensure the swift provision of third-party authorisations, notifications of authorities and licenses to be granted through the latter.
- 8.3. The buyer shall be liable for ensuring the correctness of all technical documentation provided, i.e. technical drawings, building plans, storage plans etc.
- 8.4. If the completion of services is delayed or rendered impossible through circumstances for which the buyer is responsible, or if the buyer refuses acceptance, its obligation to pay the purchase price shall remain unaffected.
- 8.5. The buyer shall inform PJM without delay of any changes in his contact data, such as name, address and e-mail address, either in writing or by e-mail. Furthermore, the buyer shall be responsible for ensuring that the receipt of e-mail messages is not hampered by forwarding, closing down or congestion. If the buyer violates these obligations through his own negligence, PJM reserves the right to cancel the contract and to invoice the buyer for any damages suffered.

9. Project execution

- 9.1. PJM usually creates a specification including the most important project data as well as the detailed task. This specification must be inspected and released by the buyer before the beginning of the service provision. In case no feedback is provided by the buyer until then, the specification is automatically considered as inspected and released.
- 9.2. For the prevention of delays, the buyer appoints a contact person on site who is always available and competent to make a decision.
- 9.3. The buyer shall provide the necessary infrastructure for any PJM services.
- 9.4. The buyer is responsible for the immediate and continuous temporal and local availability of the work item as well as for the maintenance of its operational condition.
- 9.5. The buyer is responsible for the necessary safety measures.
- 9.6. PJM is not responsible for rail crime or vandalism during the service provision. In areas with an (increased) safety risk for staff or equipment (burglary), the buyer must provide a security service.
- 9.7. The PJM services must not be hindered by any other works. Soldering and welding works on the work item must be agreed with PJM.
- 9.8. The conduction of services in Switzerland after the exceedance of the 90 days-limit depends on the award of the work permit in Switzerland.

10. Reservation of title

- 10.1. Goods supplied or installed by PJM or goods that were handed over to the buyer in any other way shall remain the sole property of PJM until payment has been made in full.

- 10.2. Until PJM claims have been settled in full, the delivery item/service shall not be mortgaged, transferred as security or encumbered with third-party rights in any other way.
- 10.3. A resale shall only be admissible if PJM is notified of the purchaser's name and address and if PJM expressly agrees to the resale.
- 10.4. If the buyer defaults on its payment obligations, PJM reserves the right to reclaim the reserved goods. In such a case, the buyer shall be obligated to release them. The buyer agrees that PJM shall have the right to enter the location of the reserved goods in order to assert this reservation of title. Such a reclaim shall not be considered a withdrawal from the contract.
- 10.5. Up until the transfer of title to the buyer, PJM reserves the right to refuse the delivery of its products if the buyer becomes bankrupt or if insolvency proceedings are instigated against it or rejected for lack of sufficient assets.
- 10.6. Until its payment obligations have been met in full, the buyer shall keep the product in a workable, functioning condition.

11. Warranty

- 11.1. The warranty period is one year from the date of the handover to the buyer. If acceptance procedures are agreed, the warranty period begins upon acceptance. In the case of replacement deliveries or error correction, the warranty period for the parts affected by the defect begins to run anew for another 12 months, which extends the total warranty period to a maximum of 24 months.
- 11.2. Warranty claims may only be asserted subsequent to a notice of defects, which must be delivered exclusively by registered post and contain a detailed description of faults and indication of possible reasons. Such notice of defects must be given within 14 days from the rendering of the service or partial service.
- 11.3. Defects that cannot be detected within this period even through meticulous inspection shall be reprehended immediately after their detection and within the warranty period.
- 11.4. With the exception of cases where legal provisions imply the right to revocation or price reduction, PJM shall reserve the right to settle warranty claims through repair or exchange at its own discretion.
- 11.5. Depending on the circumstances, PJM shall fulfil claims to repair and/or exchange within a reasonable period of time. Claims for damage due to delayed performance cannot be made during this period.
- 11.6. PJM shall have the right to demand that the defective product is sent to PJM for repair.
- 11.7. The buyer shall not have the right to refuse acceptance on the basis of an immaterial defect.
- 11.8. If a seal mounted by PJM is damaged, the warranty shall become null and void.
- 11.9. Circumstances in which the product is not fully suitable for the agreed use shall not constitute a defect, if such unsuitability arises exclusively from information made available to PJM at the time of the rendering of the service diverging from actual conditions, and if such divergence arises from a failure on the part of the buyer to fulfil its duty to cooperate.
- 11.10. Circumstances in which the buyer's technical facilities such as supply lines, cables, networks etc. are not technically flawless and fully functional or not compatible with the delivered product shall not constitute a defect.
- 11.11. PJM shall not provide a warranty for products which the buyer has modified or repaired without the prior consent of PJM, or for defects arising from non-compliance with the installation manual, improper or incorrect use of the product, or from external influences. Wear parts (e.g. batteries, axle-boxes and seals) are excluded from the warranty.
- 11.12. PJM assumes no warranty for third party services that are organised by PJM by order of the buyer.
- 11.13. In cases where the buyer's claims of defects turn out to be unjustified, the buyer shall be obligated to reimburse PJM for any expenses arising from the determination of absence of defects or repairs.

12. Compensation for damages

- 12.1. To the extent permitted by law, PJM shall be liable only for damages arising from the violation of contractual obligations and in the object of performance itself, and only if the buyer can prove either premeditation or gross negligence. Liability for slight negligence and compensation for consequential damages (e.g. downtime, additional expenses for services and charges arising therefrom, purely economic losses, loss of savings and profits, loss of interest and damages arising from third-party claims towards a contractual partner) shall be excluded.
- 12.2. Liability on the part of PJM shall, in all cases, be limited to the amount covered by liability insurance which is 10 million (products, inside of Europe).
- 12.3. The buyer shall pass on this limitation of liability to its customers and instruct them to pass it on to the final user.

- 12.4. In case of incorrect or negligent use or operation of the product or the software on the part of the buyer, all liability for damages on the part of PJM shall be excluded.
- 12.5. PJM assumes no liability for third party services that are organised by PJM by order of the buyer.
- 12.6. Although the rendering of these contractual services relies on the availability of the Global Positioning System (GPS) and the satellite and telecommunication services required for the rendering of such services, PJM shall, on the basis of the contract, not be liable for the provision of GPS and the associated satellites, the telecommunication services and the data transfer facilities, all of which lie outside the sphere of influence of PJM. Therefore, PJM shall also not be liable for the regional, timely and qualitative availability of a signal provided by the GPS satellite system. PJM assumes no liability for the accuracy of the signals transmitted by the satellite and the positioning data calculated therefrom.
- 12.7. Neither shall PJM be liable for the regional, timely and qualitative availability of the GSM mobile radio network or the individual network operator. PJM assumes no liability for positioning data being transmitted to the mobile radio network within a certain period of time or for data that has been fed into the network being delivered to the PJM server.
- 12.8. Whether the GSM mobile radio network and/or the GPS satellite positioning system will in future support the functions outlined in the contract lies outside the sphere of influence of PJM. If these services should no longer be available in future, this would be considered a case of force majeure for which neither PJM nor the buyer can be held responsible. In such a case, both PJM and the buyer would be released from their contractual obligations.

13. Withdrawal from contract, failure to meet an obligation, non-performance

- 13.1. The following events shall lead to the immediate termination of the contract:
 - The buyer uses the product for fraudulent, illegal or other improper purposes;
 - criminal proceedings are initiated against the buyer;
 - the buyer is still in default of payment after receipt of several reminders;
 - the buyer's business has been terminated or liquidated, or insolvency or composition proceedings are instigated against it or rejected for lack of sufficient assets.
- 13.2. If PJM is in default as to the performance of an obligation, the buyer shall only have the right to withdraw from the contract after an appropriate grace period has been set and elapsed fruitlessly. The grace period shall be set in writing and dispatched by registered mail.
- 13.3. The damages that PJM shall be liable for in case of failure or default as to the performance of an obligation shall, unless such failure was premeditated, be limited to 0.5% of the contractual total for each week from the end of the grace period, but shall in no case exceed 5% of the contractual total.
- 13.4. In cases where a supplier to PJM defaults on proper and timely delivery, for any reason outside the sphere of influence of PJM, for which PJM shall produce evidence, PJM reserves the right to withdraw from the contract.
- 13.5. In cases where the buyer defaults on a partial payment or a duty to cooperate in a way that makes the completion of the order on the part of PJM impossible or hinders it significantly, PJM shall have the right to withdraw from the contract. In such a case, and in cases where the buyer withdraws from the contract for unwarranted reasons, the right of PJM to the agreed fee in its total shall remain unaffected. In cases where PJM withdraws from the contract for warranted reasons, PJM shall be paid for any services already rendered.

14. Cancellation of service contract*

- 14.1. The service contract for data services (SIM, Server) shall be concluded for an indefinite period of time. The contract shall commence upon the installation of the products in the wagon and/or the activation of the SIM card provided by PJM. The buyer shall have the right to cancel the service contract at the end of each calendar year, subject to a three-month notice period. The units shall be deactivated irreversibly upon cancellation of the service contract.

15. Confidentiality

- 15.1. The contractual parties shall keep confidential all mutually provided information and documents and shall take all measures required to ensure that third parties cannot access or use them. This duty of confidentiality also refers to employees, vicarious agents and contractual partners.

16. Data protection and intellectual property rights

- 16.1. The buyer expressly agrees with the collection, processing and use of personal data for the purpose of completing the order. The shared data shall only be used within the framework of the business relationship that is required for completing the order and shall be protected from third-party access. Data shall be saved only to the extent that this is deemed necessary for the contractual relationship or due to other legal provisions.
- 16.2. The buyer agrees with its data being passed on to the officially privileged creditor protection associations AKV EUROPA - Alpenländischer Kreditorenverband für Kreditschutz und Betriebswirtschaft, Creditreform Wirtschaftsauskunftei Kubicki KG and Kreditschutzverband von 1870.
- 16.3. The WaggonTracker, its software and operating mode are the intellectual property of PJM and patented under registration number PCT/AT2009/000333.
- 16.4. The buyer agrees that general project information may be used for advertising purposes.
- 16.5. PJM reserves all rights to documents drawn up by PJM (in particular plans, brochures, technical documents) and their use.
- 16.6. The use of such documents or parts thereof shall require the express consent of PJM. All documents may thus be used only for the purposes expressly specified in the order placement or in a subsequent agreement.
- 16.7. PJM shall have the right and the buyer shall be obligated to indicate the PJM name (company, trade name) in publications or announcements of the project.

17. Legal recourse and waiver

- 17.1. The non-assertion of claims on the part of PJM in cases of violation of the contractual provisions by the buyer shall not give rise to a waiving of legal remedies with regard to earlier or later violations of this or any other contractual provision or to a contract amendment.
- 17.2. All rights and legal remedies shall be considered cumulative and non-exclusive and may be used individually or in parallel.

18. Legal succession

- 18.1. If a new business venture is founded in order to perform transactions, all rights and duties of PJM shall be transferred to the new business. The reestablishment of the contractual relationship shall not be required. Advance notification of such legal succession shall be given in good time.

19. Place of performance, court of jurisdiction, applicable law

- 19.1. Unless agreed otherwise in writing, the place of performance shall be the place of business of PJM in 8020 Graz.
- 19.2. Contracts concluded between PJM and its buyers shall be exclusively subject to Austrian law. The UN Convention on Contracts for the International Sale of Goods as well as the conflict of laws rules shall be excluded. The contractual languages shall be German or English.
- 19.3. All disputes arising from this contract between PJM and buyers from EU-countries, Island, Liechtenstein, Norway and Switzerland shall be settled by the competent court at the place of business of PJM. PJM reserves the right to also file suits at the buyer's court of general jurisdiction.
- 19.4. All disputes arising from this contract between PJM and buyers from all other countries that are not mentioned under point 19.3 above shall be finally settled under the Rules of Arbitration of the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna (Vienna Rules) by one or three arbitrators appointed in accordance with the said Rules.

20. Severability clause

- 20.1. If individual provision of these Terms and Condition should be or become invalid, the validity of the remaining provisions shall remain unaffected. Invalid or missing provisions shall be replaced by legally valid provisions that come closest to the economic purpose originally envisaged by the contractual parties.

*By their nature, individual sub-points from 12. ('Compensation for damages') and 14. ('Cancellation of service contract') do not apply to the WaggonTracker versions without GPS or GSM.

As of November 2017