

General Terms and Conditions of Sale, Delivery and Payment of Emil A. Peters GmbH & Co. KG

General Terms and Conditions of Sale, Delivery and Payment

Clause 1 - Scope of Application and General Provisions

- 1) The present general terms and conditions are the only conditions that shall apply; conditions of the buyer that are contradictory to or deviant from our general terms and conditions will not be accepted unless expressly approved in writing. Our general terms and conditions of sale, delivery and payment shall also apply when we deliver our goods to the buyer without reservations, although we are aware of contradictory or deviant conditions of the buyer.
- 2) Delivery contracts shall only be deemed to have been concluded if we either confirm this or execute the order by sending the goods. The scope of deliveries or services (hereinafter referred to as "Deliveries") shall be governed by the written declarations of both parties.
- 3) Our terms and conditions of sale, delivery and payment shall also apply to all future business transactions with the buyer.
- 4) Headings in these Terms and Conditions are for convenience only; they do not define or limit the terms of these Conditions as such and, in particular, with respect to the content of each section.
- 5) The products we offer and/or supply are designed for use within the European Union (EU). If and to the extent the buyer sells such products to a third party having its registered place of business within the NAFTA-territory (United States of America, Canada and Mexico) or a buyer who uses or allows to use the product within the NAFTA-territory (whether as delivered by us or as a component of the buyer's or any third party's product), the buyer shall indemnify us and hold us harmless from all claims brought against us by third parties (including reasonable legal fees) as regards the product we have supplied. The foregoing shall not apply where the buyer can show that the damage is attributable to our product.

Clause 2 - Offers

- 1) All parts of our offers are subject to change without notice.
- 2) We reserve the copyright and title to illustrations, drawings, calculations and any other documents. Such documents must not be made available to any third party, unless we have expressly agreed in writing.

Clause 3 - Prices and Terms of Payment

- 1) Unless the contractual arrangements specify otherwise, prices are quoted ex works, without packaging which will be invoiced separately.
- 2) If the cost factors (production material, energy, operating materials, wages and salaries, etc.) relevant for price formation change substantially in the period between the conclusion of the contract and the contractually stipulated time of delivery or acceptance, we shall be entitled to demand the agreement of new prices from the contractual partner in order to compensate for such cost increases by changing the prices offered or confirmed. If no agreement is reached, we shall be entitled to withdraw from the contract. If the cost factors mentioned in sentence 1 are reduced, the contractual partner shall be entitled to an agreement on a corresponding price reduction and, in the absence of an agreement, to withdraw from the contract by applying the above provision accordingly. A change in the cost factors is essential within the meaning of sentence 2 if there is a cost difference of more than 10% between the conclusion of the contract and the time of delivery or acceptance.

3) All prices specified by us are net prices, exclusive of the statutory turnover tax rate that applies at the time of invoicing.

4) Unless otherwise specified in the contract, the buyer will be in default of payment 30 days after receipt of our invoice or request for payment. The buyer shall not be entitled to deduct a trade discount, unless this has been expressly agreed in writing.

5) The buyer shall only be entitled to set-off rights when the buyer's counterclaims have been legally established, are uncontested or have been accepted by us. The buyer shall, moreover, purchase only be entitled to claim a right of retention if the buyer's counterclaim is based on the same contractual relationship as the claim for payment.

Clause 4 - Delivery and Delivery Time

1) In accordance with the contractual agreements, compliance with agreed delivery periods requires the timely receipt of all documents to be supplied by the contractual partner, the necessary approvals and releases, in particular of plans, as well as compliance with the agreed terms of payment and other obligations by the contractual partner. If these conditions are not met in good time, the deadlines shall be extended accordingly. This shall not apply if we are responsible for the delay.

2) In the event that we are in default with our performance, the damage caused by the delay which is suffered by the contractual partner shall be limited to the typical, foreseeable damage. In particular, lost profit or production downtime costs shall not be reimbursed.

3) If dispatch or delivery is delayed at the request of the contractual partner by more than one month after notification that the goods are ready for dispatch, we shall be entitled to charge the contractual partner storage fees amounting to 0.5% of the price of the delivery items for each month commenced, but no more than a total of 5%, unless we can prove higher storage costs. The contractual partner can provide evidence of the fact that storage costs did not arise at all or that they were considerably lower than the flat rate.

4) Force majeure, riots, strikes, lockouts, operational disturbances of any kind, official measures, failure to deliver materials and other delays in the manufacturing process that occur through no fault of our own shall postpone the delivery date accordingly, but not beyond 2 months of the agreed date. After expiration of these 2 months each side shall be entitled to withdraw. Claims for damages cannot be asserted in any of the cases mentioned.

5) Unless agreed otherwise, we shall be entitled to partial performance. The contractual partner shall not be entitled to reject partial deliveries unless such partial deliveries are unreasonable for the contractual partner due to the nature of the contractual obligation or due to the nature of the item or its intended use. Moreover, excess or short deliveries of up to 10% of the ordered scope of delivery are permissible; such excess or short deliveries cannot be objected to.

Clause 5 – Passing of Risk

1) Unless the contractual arrangements specify otherwise, deliveries are made ex works. This shall also apply if the buyer requests the object of sale to be delivered to another delivery address. The risk shall in that case pass to the buyer at the time when the object of sale is handed over to the person in charge of transportation.

2) If required by the buyer, we will take out a transport insurance for the consignment; the costs incurred for this insurance shall be borne by the buyer.

Clause 6 - Liability for Defects

1) In accordance with § 377 HGB (German Commercial Code), the contractual partner shall be obliged to inspect the received goods immediately and to notify us promptly in writing of any complaints, namely obvious defects without delay, but at the latest within 10 days after receipt of the delivery, and hidden defects without delay after discovery of the defect.

2) Should the object of sale be defective, we shall as a first remedy always be granted the opportunity to subsequently perform in compliance with the regulations in clause 439 of the German Civil Code (BGB).

3) If we are not prepared or not in the position to subsequently perform, or should said subsequent performance be delayed beyond reasonable time limits for reasons for which we are responsible, or should said subsequent performance fail for other reasons, the buyer shall, at his own discretion, have the right to withdraw from the contract or demand a reduction of the purchase price.

4) Unless anything else follows from the regulations set out below, any further claims of the buyer - on whatever legal grounds - shall be excluded. We shall, therefore, not be liable for damage that is not done to the delivered item itself; we shall, in particular, not be liable for lost profit or other damage to property the buyer may incur. The above liability disclaimer shall not apply if the damage is caused intentionally or by gross negligence and in cases in which life, limb or health is put at risk. Neither shall the liability disclaimer apply if we have accepted a guarantee for the condition of the object or its durability. The above liability disclaimer shall not apply either for damage caused by culpable breach of material contractual obligations; unless the damage is caused intentionally or by gross negligence or unless we have accepted guarantees, the extent of our liability shall in this case be limited to damage that can be anticipated in view of the special nature of the contract.

5) The buyer's warranty claims become statute-barred after twelve months. This shall not apply in all cases in which the legal regulations of clause 438, subclause 1 (2) of the German Civil Code (BGB) (structures and objects for structures), clause 479 sub-clause 1 BGB (right of recourse), and clause 634a sub-clause 1 (2) BGB (structural defects) require longer periods.

Clause 7 - Total Liability

1) Any further liability for damages and compensation of expenses other than the liability specified in clause 6 above - irrespective of the legal nature of the asserted claim - shall be excluded. This regulation shall not apply to claims asserted against us on the basis of clauses 1 and 4 of the German product liability act (ProdHaftG). Neither shall the exemption from liability apply in cases of damage caused intentionally or by gross negligence, or cases in which life, limb or health is put at risk, and in cases of a culpable breach of material contractual obligations. Claims for damages in the case of a breach of material contractual obligations shall however be limited to damage that can be anticipated in view of the special nature of the contract, unless the damage is caused intentionally or by gross negligence or unless liability because of a risk to life, limb or health applies. The above regulations do not involve any reversal of the burden of proof to the disadvantage of the buyer.

2) We shall be entitled to the statutory warranty claims without any restriction.

Clause 8 - Reservation of Title

1) The objects of the deliveries (reserved goods) shall remain our property until all claims to which we are entitled against the contractual partner from the business relationship have been fulfilled. Should the buyer violate the terms of the agreement, in particular when the buyer fails to pay by the due date, we shall have the right to withdraw

from the contract, and take back the object of sale. We are further entitled to commercialise the object of sale after it has been taken back; the commercialisation proceeds that remain after deduction of reasonable commercialisation costs shall be offset against the amount payable by the buyer.

2) The buyer shall treat the object of sale with all due care. The buyer shall take out a replacement value insurance at his own expenses to insure the object of sale against fire, water and theft damage. The object shall be maintained and serviced by the buyer in due time to the extent necessary at the buyer's own expenses.

3) The buyer is obliged to inform us without delay in writing of any seizure or other third party intervention. The buyer is in such a case in addition obliged to give us full support in asserting our rights in and out of court, in particular by providing us with the required documents.

4) The buyer shall have the right to resell the object of sale in an ordinary course of business, however he shall at this stage already assign to us all claims to the extent of the invoiced amount (inclusive of value added tax), which will accrue to him vis a vis his customer or third parties as a result of the resale. Said assignment shall become effective irrespective of whether the object of sale is resold without or after processing. We herewith accept said assignment. The buyer retains the right to recover debts as part of the ordinary course of business. This right becomes null and void if the buyer fails to comply with his payment obligations from the sales proceeds he has received or if he fails to pay by the due date. Said right becomes furthermore null and void if a petition for the institution of insolvency or composition proceedings is filed against the buyer's property or if the buyer suspends his payments. In these cases we shall be entitled to recover the assigned debts ourselves. The buyer shall be obliged to provide us with all information required for recovery and to submit the relevant documents to us. The buyer is in this case furthermore obliged to inform the debtors (third parties) of the assignment.

5) When the object of sale is processed or transformed by the buyer, this shall always be done for us. If the object of sale is processed with other items that are not our property, we shall acquire the joint title to the new object on a pro rata basis that reflects the relationship between the value of the object of sale and the other processed items at the time of processing. In all other respects, what has been said above for the object of sale delivered under proviso shall equally apply to the object produced by processing.

6) If the object of sale is inseparably compounded with other items that are not our property, we shall acquire the joint title to the new object on a pro rata basis that reflects the relationship between the value of the object of sale and the other compounded items at the time of compounding. Should compounding be made so that the buyer's object becomes the main object, it shall be understood that the buyer transfers a pro rate joint title to us. The buyer shall keep the sole title or the joint title thus created in safe custody for us.

7) We undertake to release, upon the buyer's request, the securities to which we are entitled in so far as the value of our securities exceeds the claim to be secured by more than 20 percent; the decision as to what securities shall be released rests with us.

Clause 9 - Place of Performance, Applicable Law and Jurisdiction

1) Unless agreed otherwise, the commercial domicile of our company shall be the place of performance.

2) Only German law shall apply to all business relations with us. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

3) If the customer is a merchant, a legal entity under public law or a special fund under public law, the courts of the Federal Republic of Germany shall have international jurisdiction for all legal disputes and the registered office of our company shall be the place of jurisdiction for both parties to the contract for all disputes arising directly or indirectly from the contractual relationship. However, we shall be entitled to sue the contractual partner at that party's general place of jurisdiction. These rules on jurisdiction also apply to actions in bill of exchange or cheque litigation.