

General Terms and Conditions of PEC Europe GmbH

Article 1 Scope of Application

(1) The general terms and conditions below apply to all contracts for the delivery of goods or rendering of services concluded between us and the buyer of goods or order of services (hereinafter jointly "Buyer"). They apply also to all future business relations and to the legal relationship prior to conclusion of a contract even if they are not explicitly agreed once again. Any deviating terms and conditions of the Buyer which we do not expressly acknowledge are not binding on us, even if we do not expressly object to them.
(2) Our terms and conditions will be considered to have been accepted on acceptance of our goods or services at the latest.
(3) These general terms and conditions apply exclusively to transactions with businesses, legal entities organised under public law and special funds under public law within the meaning of § 310 (1) of the German Civil Code (BGB).

Article 2 Conclusion of Contract

(1) Our offers are non-binding. Conclusions of contracts and other agreements and guarantees will not become binding until confirmed by us in writing. If an order is to be deemed an offer pursuant to § 145 of the Civil Code, we may accept it within two weeks.
(2) Errors in offers, catalogues, order confirmations, invoices, including calculation and typographical errors, are not binding on us. Information in catalogues, brochures, drawings, advertisements and on websites produced by us are only decisive if we explicitly designate it as binding in contracts.
(3) We reserve the exclusive rights of title, authorship and use in offer- or order-related execution documents or drawings. The same applies to other documents, plans or sketches, machine or tool designs and construction calculations produced by us. These documents must not be passed on to third parties. If conclusion of a contract between us and the Buyer does not come about, at our request these documents must be returned to us without delay.
(4) If forms and objects are to be delivered on the basis of drawings, models or samples that were provided to us by the Buyer, the Buyer warrants that no industrial property rights of third parties will be infringed by the manufacture and delivery.
(5) If we are prohibited from manufacturing and delivering objects that were made on the basis of drawings, models or samples of the Buyer by a third party that refers to property rights owned by it, we are entitled to discontinue manufacture and delivery and to demand reimbursement of the costs incurred without being obliged to examine the legal situation.
(6) In all cases of this Article 2 (4), the Buyer is obliged to indemnify us from third-party compensation claims without delay.
(7) We may destroy samples, drawings and other annexes to the order six months after performance of the contract.

Article 3 Delivery Deadlines and Delivery Dates

(1) Delivery deadlines and dates are only approximate. The prerequisite for compliance with the delivery period by us is that all commercial and technical issues between us and the Buyer have been resolved and that the Buyer has fulfilled all its obligations, such as presenting the necessary official certificates or permits, submitting the necessary execution documents or making an agreed down-payment. Our delivery is contingent upon our having been supplied in a correct and timely manner by our own suppliers, even if a particular delivery date has been explicitly agreed.
(2) Subject to the above prerequisites, delivery deadlines will commence to run on the day following the date of order confirmation, in the event of deviating agreement and in any case no earlier than when there is mutual clarity as to the performance of the delivery. Delivery deadlines and dates refer to the date of dispatch ex works. If it becomes apparent already prior to the date fixed for delivery that the Buyer has committed or will commit a material breach of contract, we are entitled to rescind the contract in whole or in part and – if the Buyer is responsible for the breach – to demand compensation.
(3) Without prejudice to our rights arising from default, delivery deadlines and dates will be extended by the period by which the Buyer is in default towards us or does not fulfil duties to cooperate.
(4) We are entitled to make partial deliveries, which are deemed an independent transaction in each case, to a reasonable extent. This will not affect the price. If the Buyer intends to call off partial deliveries, the Buyer must call off and divide the partial deliveries in such way that we are able to manufacture and deliver as contractually agreed. If the Buyer does not call off or divide or does not do so in good time, after having set a deadline that has expired without any action having been taken, we are entitled to rescind the contract and/or to demand compensation.
(5) If we have not made a deviating agreement with the Buyer, call-off orders must be taken in hand by the Buyer within five weeks after provision of the delivery.
(6) If the non-compliance with deadlines can be attributed to force majeure, e.g. mobilisation, war, civil disturbances or similar unpredictable occurrences, e.g. strike or lockout, the deadlines will be extended appropriately.
(7) This also applies if such circumstances occur at our own suppliers. In an event of force majeure results in a final, permanent and irreversible performance impediment, we are entitled to rescind the contract.
(8) If default on our part occurs, the Buyer may rescind the contract after expiry of a reasonable grace period set for us to the extent the goods have not been reported as ready for dispatch by expiry of the deadline.
(9) If we do not cause the default in delivery intentionally or grossly negligently, we are liable within the framework of lump-sum compensation for default for 1.5 % of the delivery value for each full week of default, but no more than 7.5 % of the delivery value.
(10) Any further statutory rights and claims of the Buyer's due to default in delivery will remain unaffected.

Article 4 Dispatch, Collection and Transfer of Risk

(1) Goods reported as ready for dispatch must be called off by the Buyer

without delay. If the Buyer fails to do so, default in acceptance will occur.
(2) Dispatch is made carriage forward ex warehouse [EXW Incoterms 2010] unless otherwise agreed.
(3) When the goods are handed over to the carrier or forwarding agent, however, no later than when they leave the warehouse, the risk will transfer to the Buyer, even if the goods are delivered free place of destination. We will insure deliveries against the usual transport risks at the request and expense of the Buyer.
(4) If it is agreed that the buyer collects the goods, the risk passes to the buyer on the day the goods are provided for collection. The date of provision for collection will be communicated to the buyer with advance notice of at least five (5) working days.

Article 5 Developments, Tools and Moulding Equipment

(1) Any tools and moulding equipment needed for our production and procurement that we produce or procure on behalf of a Buyer are our property even if the Buyer has paid a pro rata share of the tooling costs to us.
(2) A right of exclusive receipt of the tools cannot be granted if a Buyer has paid only a pro rata share of the tooling costs.
(3) If a Buyer – pursuant to agreement with us – pays the full development and manufacturing costs, it is entitled to ownership of this tool and to the right of exclusive receipt of the items manufactured with it.
(4) If developments are carried out on the basis of a Buyer's specifications, we will not check whether existing industrial property rights are infringed. The Buyer is obliged to indemnify us from third-party compensation claims owing to infringement of industrial property rights.

Article 6 Prices and Terms of Payment

(1) Unless otherwise agreed in writing, our prices are in euros plus valid VAT ex warehouse.
(2) Transport packaging is invoiced separately.
(3) If, as agreed, we take in cheques, this occurs subject to receipt less costs and expenses with the value date on which we can dispose of the equivalent value.
(4) In case of the Buyer's default in taking delivery, the total payment becomes due 15 days after notification of readiness for shipment.
(5) If it is agreed that the buyer collects the goods, the purchase price is due for payment as soon as the goods are provided for collection.
(6) The payment of the purchase price is effected in euros solely into the accounts disclosed to the Buyer. The Buyer bears the costs of any transfer fees or bank service charges incurred.
(7) The payment of the purchase price must be effected no later than on the agreed date or – in the absence of agreement – immediately, without deduction. The date of receipt of payment into the bank account disclosed to the Buyer is determinative.
(8) The deduction of a cash discount is only admissible in case of written separate agreement and only under the further condition that any and all due payment obligations under previous shipments have been completely fulfilled.
(9) Our prices apply only to the offered or confirmed numbers of articles and the described material and design types. Additional services must be remunerated separately by the Buyer. The Buyer must assume excess quantities up to 5% of the individual items at the contractual price.
(10) We may initially offset the Buyer's payments against its oldest, non-statute-of-limitations-exempt debts. If costs and interest have already arisen, we are entitled to offset the payment first against the costs, then against the interest and finally against the primary claim. Differently worded payment terms of the Buyer are not binding on us.
(11) If the payment period is exceeded, interest in the amount of 9 percentage points above the base interest rate is owed. Further-reaching compensation claims on our part are reserved.
(12) The Buyer is only entitled to offset claims and to exercise a right of retention if its claim is undisputed, recognised by us and has become final and absolute.
(13) All of our claims will be due immediately if the payment terms have not been complied with or if we are aware of circumstances that are likely to reduce the creditworthiness of the Buyer. In these cases, we are entitled to execute still outstanding deliveries only against advance payment. If default with payment of the Buyer is on hand, we are additionally entitled to rescind the contract and demand compensation. Moreover, we may prohibit the resale and the processing of the delivered goods and to demand their return or the transfer of the indirect possession of the delivered goods at the Buyer's costs and to revoke the authorisation to collect receivables pursuant to § 7 (3). In the latter case, the Buyer is obliged to disclose the assigned receivables to us and to cooperate in notifying the third-party debtors of the assignment of receivables.
(14) The Buyer hereby authorises us to set foot on the Buyer's establishment in the mentioned cases and to remove the remaining delivered goods – such removal will be deemed rescission of contract; at the same time, we reserve the right to assert further claims against the Buyer, in particular compensation claims.
(15) Reasonable price alternations due to changed wage, material and distribution costs are reserved for deliveries that are executed later than four (4) months after conclusion of contract. This does not apply if an explicit fixed price agreement was made.

Article 7 Reservation of Title

(1) The delivered goods will remain our property until full payment of all our claims under the business relationship. They may be sold only in the proper course of business either against cash payment or by passing on the reservation of title.
(2) Provided the Buyer is not in default with payment, it is entitled to resell the goods under reservation of title in the proper course of business or to otherwise realise them. Pledges or transfers by way of security are inadmissible, just as is the assignment of the Buyer's claim under the resale to a third party with the exception of the assignment to an agent if simultaneously the obligation of the agent – as long as claims of ours against the Buyer exist – is established to effect the consideration to us directly. Unless the Buyer admissibly assigns receivables from the resale to an agent pursuant to the above sentence, it will herewith assign to us its future receivables from the resale of the goods under reservation of title in the full amount and like other ancillary rights and security

rights from the sale and – if joint ownership of the goods subject to reservation of title exists in part corresponding to such joint ownership – until full redemption of all of our claims. We herewith accept this assignment. The Buyer will hold the thus created sole or joint ownership of property on our behalf.
(3) As long as the Buyer complies with its obligations towards us and does not become illiquid, it is revocably entitled to collect the receivables assigned to us for its own account and in its own name. When our receivables are due, the Buyer must immediately pay the collected amounts to us.
(4) The direct debit authorisation can be revoked at any time if the Buyer does not duly meet its payment obligations. If goods are combined or mixed with other objects, we acquire joint ownership in the new object commensurate with the ratio of the value of our goods subject to reservation of title to that of the other processed goods at the time of processing. Any processing of the delivered goods subject to reservation of title by the Buyer is done for us.
(5) In the event of breaches of duty by the Buyer, particularly default on payment, we are entitled to rescission in addition to repossession of the goods subject to reservation of title.
(6) The Buyer must inform us without delay if a third party carries out enforcement proceedings on the goods subject to reservation of title or on the claims assigned in advance and provide us with the documentation necessary for intervention.

Article 8 Liability for Defects

(1) The time of delivery is determinative for whether the goods are in the contractually agreed condition.
(2) For the Buyer to have warranty rights, the Buyer must have duly satisfied its duty to examine and object to defects under § 377 of the German Commercial Code (HGB).
(3) If the Buyer does not give us an opportunity to assure ourselves of a reported defect, in particular, if the Buyer does not provide the goods objected to or samples of them to us without delay, no claims based on this defect may be asserted.
(4) If defects appear, the Buyer must cease working with and processing the defective goods.
(5) If there is a defect in the delivered goods or our service, we are entitled, at our choice, to remedy the defect or to deliver new goods or to render new services. If the remedy of the defect or the delivery of new goods or the rendering of new service fails or we are otherwise entitled to refuse to take additional measures, the Buyer is entitled to the rights under statutory law. As a rule, it is reasonable to expect the Buyer to tolerate at least two attempts to remedy defects. Rescission is excluded in the event of insignificant breaches of duty.
(6) If we caused a defect intentionally or through gross negligence or a defect caused culpably by us results in an injury to life, limb or health, the Buyer's warranty claims (arising from defects) will become time-barred in accordance with the rules of statutory law. Warranty claims (arising from defects) also become time-barred in accordance with the rules of statutory law when we deliver an object that has been used in keeping with its usual manner of use for a structure and has caused a deficiency in the structure. Otherwise, warranty claims (arising from defects) become statute-barred one year after delivery.

Article 9 Liability

(1) We are liable for our own wilful conduct or our own gross negligence and for the wilful conduct or the gross negligence of our management employees. We are also liable for the failure to fulfil warranties, if a procurement risk is assumed, in the event of any culpable injury to life, body or health and within the limits of the liability under the German Product Liability Act (Produkthaftungsgesetz).
(2) We are liable on the merits in the event of any culpable breach of material contractual duties, thus such duties the proper performance of which the Buyer relies on and may rely on, as a rule, for the performance of the contract, and in the event of any gross negligence of simple vicarious agents. Our liability under this Article 9 (2) is limited in amount to compensation for the typically foreseeable damage.
(3) Any further liability is excluded. Any exclusion or limitation of liability shall also extend to the personal liability of our employees, workers, staff, representatives and vicarious agents.

Article 10 Place of Performance, Jurisdiction, Applicable Law

(1) The place of performance for payments is Duisburg; the place of performance for deliveries is the place where our warehouse in Germany is located. The courts in Duisburg have jurisdiction for any and all disputes arising between us and the Buyer from the contracts concluded between us and the Buyer (including actions concerning cheques and bills of exchange).
(2) The relationships between us and the Buyer are governed exclusively to the laws applicable in the Federal Republic of Germany. The application of the CISG is excluded.

Article 11 Miscellaneous

(1) We are entitled to store personal data relating to the Buyer as defined in the German Federal Data Protection Act (Bundesdatenschutzgesetz).
(2) If any provisions of these Terms and Conditions are or become invalid or unenforceable in whole or in part, this shall not affect the validity of the other provisions. In such event, the parties undertake already at this time to enter into negotiations with the aim of replacing the invalid or unenforceable provision with a valid provision that reflects as closely as possible the economic intention of the parties with regard to the invalid or unenforceable provision. If there is a lacuna in these Terms and Conditions, what the parties would have agreed on if they had considered such a case is deemed to have been agreed.

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