

General Terms and Conditions (Sales terms)

PFEIFER DRAKO Drahtseilwerk GmbH & Co.KG

for use in business with companies, corporate bodies under public law and separate estates governed by public law

1. GENERAL PROVISIONS

1.1 Our deliveries and services take place exclusively on the basis of the following conditions. We do not recognize any purchasing conditions that the buyer may have.

1.2 Our terms and conditions specifically apply to contracts concerning the sale and/or the delivery of chattels (hereinafter referred to as 'goods'), regardless of whether we produce the goods ourselves or buy them from suppliers (Sects. 433, 651 German Civil Code). Without us having to refer to them in each individual instance, the current version applies as a framework agreement both for future contracts concerning sales and/or the delivery of chattels with the same buyer.

1.3 Our quotations are subject to change and non-binding. This applies even if we have given the buyer catalogues, technical documentation (e.g. drawings, plans, calculations, cost estimates, references to DIN standards), other product descriptions or documents (even in electronic form) which are our property and to which we own the copyright.

1.4 Concerning the interpretation of commercial terms, the respective current version of Incoterms shall apply.

2. DELIVERY TIMES, DELAY IN DELIVERY, RESERVATION TO MAKE SELF DELIVERY

2.1 The delivery dates stated by us shall not be binding unless they are explicitly confirmed in writing by us as a 'binding delivery date'. They are extended to activities which are part of labour disputes, especially strikes and lockouts as well as the start of time-related hindrances for which we are not responsible which take place up until the hindrance is overcome. If, through the hindrance, we find that the delivery is impossible or unreasonable, we shall be entitled to withdraw from the contract. The buyer has the same right, if he finds that the acceptance is unreasonable due to the delay. In principle, the buyer's or our right to withdraw shall only apply to the part of the contract which has not been fulfilled. If partial deliveries that have been made are unusable for the buyer, he shall be entitled to withdraw from the entire contract. The buyer's right to withdraw and terminate the contract in accordance with point 8 of these conditions remains unaffected.

2.2 As we source goods wholly or in part from other manufacturers, the delivery of our goods is subject to the reservation to make deliveries to ourselves. Where we cannot adhere to binding delivery dates, we shall inform the buyer about this without delay and at the same time, by determining a new delivery date, provide information as to when and the extent to which we can possibly make a later delivery. If the prospect of a subsequent delivery cannot be entertained (impossibility) or additionally, if the provision of a service is not available within the new delivery date, we shall be entitled to withdraw from the contract (wholly or in part) if we are not responsible for the non-adherence to the delivery dates. Services in return which have already been provided by the buyer shall be refunded by us without delay.

2.3 If the buyer does not fulfil contractual obligations in a timely manner – including the obligation to cooperate or carry out secondary obligations (in particular, the issuing of a letter of credit, provision of domestic or foreign certificates, the making of advance payments, the reviewing of drawings or specimens (etc.)), we shall be entitled to reasonably postpone our delivery times in accordance with the requirements of our production operations, without prejudice to our rights arising from the buyer's default.

2.4 The occurrence of delivery default on our part shall be governed by statutory provisions. In each case, the buyer is required to issue a demand letter.

3. SHIPMENT, TRANSFER OF RISK, APPROVAL, DEFAULT IN ACCEPTING GOODS

3.1 Delivery shall be from stock, wherever the place of fulfilment is. Upon the buyer's request and at the buyer's expense, goods can be shipped to another destination (sale by delivery to a place other than the place of performance). Unless agreed otherwise, we are entitled to determine the nature of the shipment, especially the shipping company, shipping and packaging.

3.2 We are entitled to make partial deliveries. The buyer is obliged to accept or pay for part deliveries, unless the acceptance of part deliveries is unreasonable for him or detrimental to his other contractual rights.

3.3 The risk of accidental loss and accidental deterioration of the goods shall pass to the buyer with the handover. However, in the case of sale by delivery to a place other than the place of performance, the risk of accidental loss and accidental deterioration of the goods and the risk of delay is passed with the delivery of the goods to the carrier, freight forwarder or person or institution who/which is otherwise commissioned to carry out the shipment. Insofar as approval is agreed, the transfer of risk shall prevail. In all other respects as well, the statutory requirements of the law applicable to works and services applies to approval which has been agreed upon accordingly. If the buyer defaults in accepting the goods, the handover and/or approval is the same.

3.4 If the buyer defaults in accepting the goods, fails to cooperate or if the loading or transportation of goods is delayed for a reason for which the buyer is responsible, we shall be entitled at our discretion, to store the goods at the buyer's expense and risk of the buyer, to take all measures which are deemed appropriate to preserve the goods and to charge the goods as supplied. The same applies if goods which are ready for shipment are not collected within 4 days. The statutory provisions concerning default in accepting goods shall remain unaffected.

3.5 In the case of damage in transport, the buyer must inform us immediately and prompt the carrier to establish the facts.

3.6 Insofar as it is not usual or agreed otherwise, the goods shall be delivered unpacked and not protected against rust. For the rest, packaging materials which are made of paper, plastic, jute, etc. and disposal pallets and reels shall be charged and not taken back. Loaned reels are charged at normal rates and must be paid. If they are returned to the supplier free of charge and in good condition within 2 months, 2 / 3 of the charge will be credited. Exchangeable packaging such as lattice boxes and 'EURO-pallets' must be returned to the forwarding agent by buyer immediately after unloading in an exchangeable state (Epal). If these are damaged or not returned within a reasonable time to the forwarding agent, the buyer shall be obliged to reimburse us at the prevailing market rate.

4. PRICES AND PAYMENT CONDITIONS, ASSEMBLY COSTS

4.1 Unless agreed otherwise, our prices are ex works. VAT is added at the applicable statutory rate.

4.2 Unless agreed otherwise, payments must reach us without deduction up to 30 days following delivery (ex works). Discounts must be specially agreed with us and will only be granted if the buyer is not in default with other invoices.

4.3 The buyer is in default once the period for payment has elapsed. Interest shall be added to the purchase price for the period of default at the applicable statutory rate. We reserve the right to claim further damages as a result of defaults. In the case of contracts with traders, our right to claim interest counting from the due date (Sect. 353 Commercial Code) remains unaffected.

4.4 The buyer is only entitled to offset and withhold payments where his claim is legally established or undisputed. In case of defects with the delivery point 7.5 of these conditions remains unaffected.

4.5 If after the conclusion of the contract, it is recognized that our claim to the purchase price is at risk due to the inability of the buyer to pay (e.g. through an application to open insolvency proceedings), then in accordance with the statutory provisions to deny a service and – if necessary, the imposition of a deadline – we shall be entitled to withdraw from the contract (Sect. 321 German Civil Code). In the case of contracts concerning the manufacturing of unreasonable articles (custom-made articles), we shall be entitled to withdraw from the contract immediately. The statutory provisions concerning the expendability of deadlines remain unaffected.

4.6 In the case of assembly and installation, the expenses that we incur for the assembly, daily allowances as well as accommodation and travel costs shall be refunded. At the same time, the buyer must ensure that the assembly or installation can take place without interruption and the necessary preparations, such as foundations, electrical connections etc. are provided free of charge.

5. DIMENSIONS, WEIGHTS, QUALITY GRADES

5.1 Details of standards are based on the latest versions.

5.2 Deviations related to dimensions, weights and quality grades are permitted in accordance with DIN or the applicable practice. Other deviations require special agreement.

5.3 Technical details and the descriptions of the articles of sale are non-binding. We reserve the right to make design changes, insofar as these are reasonable for the buyer. We retain the ownership and exclusive copyright over our cost estimates, drawings and other documents. They may not be made available to third parties and must be returned immediately upon request, or if the order was not placed.

6. RETENTION OF TITLE

6.1 Until full payment of all our present and future claims under the purchase agreement and ongoing business relationship (the secured claims) has been made, we shall retain the title to the goods that have been sold.

6.2 The goods (subject to retention of title) may not be pledged to any third party or transferred as security until full payment of the secured claims, has been made. The buyer must inform us immediately in writing if third parties have a share in goods belonging to us and must inform us of the extent.

6.3 In the case where the buyer's behaviour is contrary to the contract, especially in the case of non-payment of the due purchase price, we are legally entitled, to withdraw from the contract and / or to demand the product on the basis of title. The demand should not be interpreted as a notification of withdrawal, but merely the fact that we are entitled to claim the goods and we reserve the right to withdraw from the contract. If the buyer does not pay the due purchase price, we may only assert these rights if we have unsuccessfully set the buyer a reasonable deadline for payment beforehand or where such a deadline is unnecessary in accordance with the statutory provisions.

6.4 The buyer is entitled to resell and/or process and/or remodel the goods (subject to retention of title) in the ordinary course of business. In this case, the following supplementary provisions apply:

6.5 The retention of title extends to products which are made through the processing, mixing or combining of our goods at their full value, where we are the manufacturer. If the property rights of third parties remain as a result of processing, mixing or combining with their goods, we shall acquire joint ownership in relation to the invoice value of the processed, mixed or combined goods. For the rest, the same applies for the resulting product as for the goods which have been delivered subject to the retention of title.

6.6 As security, the buyer shall assign the full debt claims against third parties resulting from the resale of the goods or products to us and/ or the amount owed under any joint ownership in accordance with the preceding paragraph. We shall accept the assignment. The obligations of the buyer cited in point 6.2 also apply with respect to the assigned debt claim.

6.7 Alongside us, the buyer shall remain authorized to collect the debt claim. We shall not collect the debt claim as long as the buyer meets his payment obligations towards us, is not in payment arrears, makes no application to open insolvency proceedings and there is no other failure in his ability to pay. If this is the case, we are entitled to demand that the buyer notifies us of the assigned debt claims, the debtors, all necessary details concerning the collection and that he hands us the appropriate documents and informs the debtors (third parties) of the assignment.

6.8 If the realisable value of the securities exceeds our debt claims by over 10 percent, we shall, at the request of the buyer, release securities of our choice.

7. THE BUYER'S CLAIM FOR COMPENSATION DUE TO DEFECTS

7.1 Insofar as nothing to the contrary is specified in the following, statutory provisions shall apply for the rights of the buyer in the case of material defects and defects of title (including incorrect/short deliveries, improper installation or incomplete installation instructions). In all cases, the special legal provisions concerning the final delivery of goods to a consumer remain unaffected (Supplier's redress in accordance with Sects. 478 and 479 German Civil Code).

7.2 No claims for compensation due to defects will be accepted in the case of slight deviations from the agreed characteristics or in the case of impairments with regard to usefulness which are only minor. For the rest, the agreement reached concerning the quality of the goods essentially forms the basis of our liability for defects. If no quality characteristics have been agreed upon, legal provisions shall be used to assess whether there is defect or not (Sect. 434, para. 1, sentences 2 and 3 German Civil Code). We accept no liability for public statements made by manufacturer or other third parties (e.g. advertising claims).

7.3 The buyer's claims for compensation due to defects shall work on the assumption that he has met his obligation to inspect the goods and provide notification of any defects (Sects. 377 and 381 Commercial Code). If a defect arises upon inspection or later on, we should be given notice of this in writing without delay. 'Without delay' means notification that is made within two weeks, wherein to meet the deadline, timely mailing of the notification is sufficient. If the buyer fails to inspect the goods properly and/or notify any defects, we shall accept no liability for the undisclosed defect.

7.4 If the delivered goods are defective, we shall be entitled to select whether we shall provide supplementary performance by eliminating the defect (rectification) or by delivering goods which are free from defects (replacement). Our right to refuse the selected supplementary performance type in accordance with statutory requirements remains unaffected. In the case of supplementary performance through rectification, failure to rectify the defect shall only be deemed such after the second unsuccessful attempt (to rectify the defect).

7.5 We are entitled to provide the supplementary performance that we owe on the condition that the buyer pays the due purchase price. The buyer is however entitled to retain a fair share of the purchase price in relation to the defect.

7.6 The buyer must grant us the necessary time and opportunity to fulfil the supplementary performance. This especially relates to the handing over of rejected goods for testing purposes. In the case of replacement, the buyer is required to return the defective goods in accordance with the statutory provisions.

7.7 We shall bear the costs which are necessary for the purpose of testing and supplementary performance, (especially transportation, travel, labour and material costs) if there is an actual defect. Where, however, a buyer's request to rectify a defect turns out to be unwarranted, we are entitled to demand compensation for the related expenses from the buyer.

7.8 In urgent cases, e.g. where a risk to operational safety or in the defence against disproportionate damage, the buyer has the right, to eliminate the defect himself and to demand reimbursement of the objective expenses which were necessary. We must be informed of such measures of one's own immediately and if possible, notified in advance. The buyer has no right to carry our measures on his own if we were entitled to refuse appropriate supplementary performance under the statutory provisions.

7.9 If the supplementary performance has failed, or a reasonable deadline which is to be set by the buyer for the supplementary performance has expired or the supplementary performance in accordance with the statutory provisions is unnecessary,

the buyer can withdraw from the purchase contract or reduce the purchase price. If there is a minor defect however, the buyer does not enjoy any right of withdrawal.

7.10 For the rest, the buyer only has a right to compensation for damages and/or compensation of wasted expenses in accordance with point 8. For the rest, all rights to compensation are excluded.

8. OTHER LIABILITY

8.1 In as far as there are no provisions to the contrary in these conditions (including the following provisions) we shall only be liable for breaches of contract and non-contractual obligations under the relevant statutory provisions.

8.2 We are liable for damages – regardless of the legal basis – in the case of intent and gross negligence. We are only liable for negligence

– in the case of damages resulting from the loss of life, physical damage or damage to health

– in the case of damages resulting from a breach of an essential contractual obligation (an obligation, where the fulfilment of which basically allows for the proper execution of the contract overall and where adherence to it is something which is regularly familiar and trusted by the contracting partners); in this case however, our liability is limited to compensation for damages which are foreseeable, or which typically occur.

8.3 The liability limitations arising from point 8.2 do not apply if we have fraudulently concealed a defect or have adopted a guarantee for the characteristic quality of the goods. The same applies to claims made by the buyer under the Product Liability Act.

8.4 In the case of an infringement that does not consist of a defect, the buyer may only withdraw from or cancel the contract if we are responsible for a breach of duty. The buyer does not enjoy an unrestricted right of termination (Sects. 651 and 649 German Civil Code especially apply). For the rest, the statutory requirements and legal consequences shall apply.

9. STATUTE OF LIMITATIONS

9.1 Notwithstanding Sect. 438, para. 1 no. 3 German Civil Code, the general period of limitation for claims related to material defects and defects of title is a year following delivery. In as far as approval has been agreed upon, the statute of limitations begins with the approval.

9.2 If the goods however relate to a building or something which in its normal use has been used for a building and has caused defects (materials), the period of limitation is 5 years from the date of delivery in accordance with the statutory provisions (Sect. 438 para. 1, no 2 German Civil Code). The statutory provisions for real claims for the restitution of property of third parties (Sect. 438, para. 1, no. 1 German Civil Code), suppliers' recourse for final delivery to a consumer (Sect. 479 German Civil Code) and for the cases of fraud by the seller (Sect. 438, para. 3 German Civil Code) shall also remain unaffected.

9.3 The foregoing period of limitation relating to sale of goods law also applies to contractual and non-contractual claims of the buyer which are based on defective goods, unless the application of the normal statutory period of limitation (Sects. 195 and 199 German Civil Code) would in individual cases, lead to a shorter period of limitation. The periods of limitation related to the Product Liability Act shall remain unaffected. In all other cases, the statutory periods of limitation exclusively apply to claims for damages made by the buyer in accordance with point 8.

10. PARTIAL INEFFECTIVENESS

In cases where individual contractual conditions are ineffective, the remaining provisions shall remain fully effective. A settlement should take the place of the ineffective provision which, within the scope of what is legally possible, comes closest to the intended meaning and purpose of the ineffective clause taking into account the economic aim.

11. CHOICE OF APPLICABLE LEGISLATION AND PLACE OF JURISDICTION

11.1 The law of the Federal Republic of Germany shall apply to these conditions and all legal relations between us and the buyer to the exclusion of all international and supranational (contractual) legal systems, especially the UN Convention on Contracts for the International Sale of Goods. The laws of the respective place of storage shall however form the basis of the conditions and effects of the retention of title (to the goods) in accordance with point 6 where following this, the choice of applicable legislation is not allowed to be made in favour of German law or where it is ineffective. The provision in point. 3.6 is unaffected by this clause.

11.2 If the buyer is a trader (a 'Kaufmann') as defined by the Commercial Code, a corporate body under public law or a separate estate governed by public law, the exclusive – and international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship will be where our head office is located in Muelheim/Ruhr, Germany. We are however also entitled to take out legal proceedings at the buyer's general place of jurisdiction.