

Terms of Purchase of Pacoma GmbH – hereinafter referred to as Party Ordering

1. Field of Application, Conclusion of Contract, Written Form, Secrecy

- 1.1. Party Ordering orders exclusively on the basis of its terms of order; opposing or deviating terms of the party accepting are not recognized by Party Ordering unless the latter has explicitly agreed in writing to the validity of the terms. The tacit acceptance of deliveries or performance made or rendered by the party accepting and payments made by Party Ordering do not constitute consent to the opposing conditions of the party accepting.
- 1.2. These terms of order apply only to companies, in accordance with section §310, paragraph. 1 of BGB [German Civil Code].
- 1.3. These terms of order also apply to all future purchases made by Party Ordering.
- 1.4. The statutory provisions also apply, as a supplement to these terms of order.
- 1.5. Each order is to be confirmed by the supplier within 5 workdays of receipt of the order.
- 1.6. Orders, delivery requests, contracts of all sorts and their amendments or extensions are only effective if made in writing. Declarations made by fax, e-mail or other types of remote data transfer shall also be regarded as being „made in writing“. No signature is required for observation/safeguarding of the written form.
- 1.7. The party accepting must treat the conclusion of contract secretly and must not refer in any publications, e.g. in advertising material or in reference lists, to any business connections with Party Ordering without the prior written consent of Party Ordering.
- 1.8. The party accepting must not make information provided by Party Ordering available to third parties, unless such information is already generally known or the party ordering has also obtained the information for some other legal and legitimate source.

2. Passing of Risk, Dispatch, Prices, Incoming Goods, Part Deliveries, Early Delivery, Transfer of Ownership

- 2.1. For deliveries involving assembly and/or installation work and for work-contract-based performance, the risk passes with acceptance: for deliveries without an assembly or installation component the risk passes to Party Ordering with their arrival at the point of receipt (delivery address) given by Party Ordering.
- 2.2. Multiple deliveries and extra performance will only be accepted by Party Ordering on the basis of the prior written consent of Party Ordering.
- 2.3. Delivery of goods prior to the order date is only permissible with the prior approval of Party Ordering. Goods delivered too early can be returned to the party accepting at the cost and at the risk of the party accepting, or can be stored on the premises of Party Ordering subject to the customary storage rates. Settlement of the invoice will be made in good time, on the basis of the agreed delivery date.
- 2.4. Delivered goods shall become the property of Party Ordering at the time of handover. The party accepting guarantees that no rights of third parties exist (e.g. retention of ownership, right of lien) and to this extent shall exempt and indemnify Party Ordering from and for all claims of third parties.

3. Delivery Date, Delay in Delivery, Contract Penalty

- 3.1. Dates agreed to are binding. The punctuality of deliveries involving no assembly or installation component is determined on the basis of the date of receipt at the point of receipt (delivery address) given by Party Ordering: the punctuality of deliveries

involving assembly and/or installation work, and of work-contract-based performance, is determined on the basis of the date of acceptance-ready completion of the entire performance to be rendered by the party accepting.

- 3.2. Without prejudice to the statutory entitlements of Party Ordering, the party accepting is obliged to notify Party Ordering immediately in writing of any circumstances having occurred, or having been recognized, that seem to make, or would make, punctual delivery impossible.
- 3.3. In cases of delay in delivery on the part of the party accepting, Party Ordering is entitled to demand a contract penalty of 0.2% of the net value of the order for each calendar day of delay, this to amount to no more than 5% of the net value of the total order. Fartherreaching statutory entitlements are reserved; in the event that these are enforced any contract penalty incurred will be set off against the damage claim enforced. Party Ordering is entitled to reserve pronouncement of the contract penalty against the party accepting for up to ten days after the passing of risk.

4. Prices, Invoices, Payment, Offsetting, Retention, Assignment of Accounts Receivable

- 4.1. The agreed prices are fixed prices and can only be altered if written confirmation has been given by Party Ordering. They are to be understood as carriage paid to the point of receipt (delivery address) named by Party Ordering or - if no such address has been named - as carriage paid to the recipient works, including packaging and transport costs and transport insurance. If, at the fault of the party accepting, express delivery must be made, the resulting additional costs are to be borne by the party accepting.
- 4.2. Unless some other agreement has been reached, payments are to be made following delivery or acceptance and receipt of a proper invoice; within 14 days subject to 3% discount, or within 60 days of delivery, net. Discount deductions are also permissible if Party Ordering offsets the sums or retains appropriate payments because of defects. In cases of retained payments the payment periods begin after the complete correction of the defect(s).
- 4.3. If the party accepting is required to deliver documents, operating instructions or certifications on materials testing, the payment periods for invoices will not commence before receipt of these documents or certifications.
- 4.4. Payment is not to be understood as recognition of the correctness of the invoice nor of the delivery/performance.
- 4.5. The party accepting has the right to offset only if its counterclaims have been legally established, are undisputed or have been recognized by Party Ordering. The party accepting is entitled to exercise right of retention only if its counterclaim relates to the same contractual relationship or has been legally established, is undisputed or is recognized by Party Ordering.
- 4.6. The party accepting may only assign claims against Party Ordering to a third party if Party Ordering has agreed to this in writing.

5. Execution of Deliveries/Performance, Claims Based on Defects, Extinction of Claim Due to Lapse of Time

- 5.1. The party accepting is obliged to execute or render all deliveries/performance professionally and in accordance with the agreed specifications and to ensure that all such work reflects state-of-the-art technology, corresponding to the pertinent statutory provisions and the regulations and directives of public authorities, professional associations and trade associations.

- 5.2. Party Ordering is entitled to demand alterations to the delivered items/performance even after conclusion of contract, provided these are reasonable from the standpoint of the party accepting. In the event of such amendments of contract the effects on both parties, especially as regards cost increases or reductions and delivery dates, must be given appropriate consideration.
- 5.3. Unless some other agreement has been reached in writing, and provided no longer periods are foreseen by law, notice of deficits in the delivery item, including the absence of assured attributes, and quantity discrepancies in the sense of section § 377 of HGB [German Commercial Code] will be regarded as having been made in good time if given within two weeks of delivery, in the case of recognizable defects, and within two weeks of detection, in the case of non-recognizable defects.
- 5.4. In the event of an obligation in kind, the party accepting bears the procurement risk, also in view of the fact that it is liable for ensuring that the goods are free of defects, whether or not it is responsible for such defects in a causative sense.
- 5.5. In addition to its statutory entitlements as regards claims based on defects, Party Ordering is also entitled, in the event of a defect in the delivered product or work, after the fruitless expiry of an appropriate period set by it for subsequent performance, to correct the defect itself and to demand reimbursement of the costs thereby incurred, unless the party accepting is entitled to refuse subsequent performance. In this connection the statutory regulation on self-performance for work contracts (section § 637 of BGB [German Civil Code]) applies for the purchase contract accordingly. To avert an acute risk of considerable damage, Party Ordering is entitled, at the cost of the party accepting, to correct the defect itself, or to have it corrected, or to replace the defective part, even without demanding that the party accepting undertake this correction if it is no longer possible, because of the particular urgency of the situation, to notify the party accepting of the defect and the threatening damage with the intention of giving the party accepting an opportunity to correct the defect itself.
- 5.6. The period of limitation for claims based on defects is 36 months, unless some other agreement has been reached explicitly or the law foresees a longer period of limitation. Claims due to deficient building work and to defective goods that are customarily used for buildings and have given rise to the deficiency expire 5 years after acceptance of the building work or delivery of the goods.
- 5.7. If the party accepting discharges its duty to make subsequent performance by means of replacement delivery, the period of limitation for the replacement product/work begins anew, after delivery/acceptance, unless the party accepting has explicitly stated that it would make the subsequent repairs or substitute delivery solely as an obliging measure to help avoid dispute, or in the interest of continuing the supply relationship.

6. Packaging

- 6.1. The goods must be packed in such a way that transport damage, corrosion and soiling are avoided. Packaging materials are only to be used to the extent necessary to satisfy this purpose. All packaging used must be environmentally acceptable.
- 6.2. If, in exceptional cases, Party Ordering is separately charged for packaging, such sums must be credited to Party Ordering in cases of returned goods.

7. Product Liability, Exemption and Indemnification

- 7.1. If, on the basis of domestic or foreign product liability regulations, a claim is raised against Party Ordering due to the faultiness of one or more of its products, the fault being traceable to products provided by the party accepting, Party Ordering is entitled to demand compensation for damages from the party accepting to the extent that the damage suffered is due to the products delivered by the party accepting.
- 7.2. The party accepting is obliged, within the framework of its responsibility for its products, to exempt and indemnify Party Ordering from and for damage claims of third parties at the first request to do so, and to reimburse Party Ordering for any and all costs incurred by it as a result of, or in connection with, a recall action initiated by Party Ordering due to the defective products of the party accepting.

8. Protected Rights

- 8.1. The party accepting must ensure that the delivery/service items are free of all rights and entitlements of third parties in Germany and, to the extent that the party accepting has knowledge of this, in the country of destination.
- 8.2. The party accepting must indemnify and exempt Party Ordering from and for all claims of third parties in connection with the violation of protected rights. The parties must mutually notify each other immediately of any claim based on violation of protected rights raised against either of them.
- 8.3. If the contracted use of the delivery/service item is impaired by the protected rights of a third party, the party accepting is obliged at its own cost, on agreement with the party awarding and without prejudice to its other contractual and legal obligations, either to acquire the unrestricted right of contracted use of the delivery/service item from the third party authorized to administer these rights, without additional costs being incurred by Party Ordering, or to alter those elements of the affected products/services such that they no longer violate the protected rights of the third party, this while still complying with the provisions of contract.

9. Export Documents, Samples, Items, Tools

- 9.1. Samples, manufacturing equipment, tools, profiles, measuring and testing devices, materials provided, drawings, standard worksheets, print masters, etc. given to the party accepting by Party Ordering remain the property of Party Ordering. They must not be used, duplicated or made available to third parties by the party accepting for any purposes other than those of the contract and must be safeguarded free of charge by the party accepting with the care and diligence of a prudent businessman, kept separate from other goods in the possession of the party accepting, marked as being the property of Party Ordering, treated with absolute secrecy and returned to Party Ordering after completion of the order without the party accepting having to be asked to do so, or otherwise at the request of Party Ordering. Articles manufactured on the basis of documents provided by Party Ordering must not be made available, given or sold to any third party by the party accepting.
- 9.2. Tools, moulds, etc. manufactured for and charged to Party Ordering become the property of Party Ordering upon payment. They must only be used by the party accepting on behalf of Party Ordering. They must be safeguarded by the party accepting with the care and diligence of a prudent businessman and must be maintained free of charge so that they can be used at any time. The party accepting bears the risk for property of Party Ordering, such as tools, moulds, etc., in its possession. After the last delivery, all tools, moulds, etc. must be returned to Party Ordering, at the request of the latter, in usable condition.

10. Place of Performance and Jurisdiction, Choice of Applicable Law, Contract Language, Partial Invalidity, Data Processing

- 10.1. Unless some other agreement has been reached, the place of performance for the deliveries/services is the point of receipt (delivery address) indicated in the order, or if none is indicated, the works in Eschwege.
- 10.2. If the party accepting is a full tradesman, a public corporation or a public-law fund, the place of jurisdiction is the registered address of Party Ordering. Proceedings against the party accepting can, however, be initiated at the latter's own general place of jurisdiction.
- 10.3. Furthermore, the law of the Federal Republic of Germany shall be applicable to the exclusion of the UN purchase-law agreement of 11.04.1980.
- 10.4. The contract language is German. Should the contracting parties also make use of another language, the wording of the German version has priority.
- 10.5. Should one of the provisions of these terms or a part of such a provision prove to be invalid, whether at present or at some future date, the remainder of the provisions, or the remaining part of the provision, shall remain valid.
- 10.6. Party Ordering is entitled to process and store data on the party accepting, in connection with the business relationship, in compliance with the German Data Protection Law.