

# General Conditions of Business

## PFEIFER SEIL- UND HEBETECHNIK GMBH

### 1. GENERAL CONDITIONS

**1.1** Supplies and performances are exclusively carried out on the basis of the following conditions. Purchasing conditions of the customer are herewith rejected.

**1.2** Our quotations are not binding, contracts and any other agreements only become binding after being confirmed by us in writing.

### 2. PRICE AND PAYMENT TERMS

**2.1** Unless otherwise agreed our prices are to be understood ex works plus VAT if to be added according to the regulations of the sales tax law and the ones of the European Community. We reserve the right to increase prices of contracts with an agreed delivery time of more than four months in accordance with increased costs resulting from collective agreements and increased material or additional costs.

**2.2** Payments have to be made within 30 days from date of shipment ex works on net terms only. Cash discounts are subject to prior agreement and are only granted if the customer is not in default of payment of any other invoice. Late payments are charged interest of 5 % above the discount rate of the Federal Bank of Germany.

**2.3** The customer may only offset payments against indisputable and legally valid claims after having given an one month written notice in advance. The right to withhold payments may only be exercised if based on the same contractual relationship.

**2.4** If payments are endangered by a customer's financial setback after signing of contract we are entitled to claim immediate payment. This applies also for any drafts irrespective of their maturity dates. Default of payment entitles us to take back the goods and should the situation arise to enter the customer's company in order to seize the goods. We may also forbid the processing of supplied goods. These conditions cease to be in force if the customer is not responsible for the default of payment. The taking back of goods does not represent a withdrawal from contract.

In both cases we may revoke the collection authority acc. to clause no 7.7 and ask advance payment for still undelivered goods. All legal consequences are avoidable if the customer offers a surety amounting to the total value of the claim.

**2.5** We are entitled to sureties corresponding to the nature and volume of our claims even if they are limited or restricted in time.

**2.6** Legal regulations concerning the default of payment remain unaffected.

**2.7** We are entitled to offset all our claims concerning the customer – whatever the legal justification may be – against the ones the customer may have against us. This can also be done if one party has agreed on cash settlement and the other one on drafts or any other kind of payment. If necessary the agreements only concern the balance. In case of different settlement dates our claims become due for payment latest on settlement date of our liabilities.

**2.8** We reserve the right to charge a handling fee of EUR 25,- on all orders up to EUR 100,- as minimum order value.

### 3. DIMENSION, WEIGHT AND QUALITY

**3.1** Norm indications always refer to the latest version.

**3.2** Tolerances in dimension, weight and quality are allowed if in accordance with the DIN-standard or general practice.

**3.3** Technical data and description of items to be delivered are not binding. We reserve the right for any reasonable technical modification of a product. All costs estimates, drawings and any other documents remain our property and copyright. It is prohibited to disclose them to any third party and they must be returned if the purchase order is not placed with us.

**3.4** All details concerning products and dimensions are non-warranted properties and represent quality statements without obligation.

### 4. SHIPMENT AND PASSING OF RISK

**4.1** Choice of transport route and means as well as of the transport agent or carrier is up to us if no contrary instructions are given by the customer.

**4.2** If loading or shipment of goods is delayed by the customer we are entitled to store them at his expense and risk as well as to take appropriate steps for their preservation and to invoice them like shipped ones. The same applies to goods for which request of delivery has not been received within 4 days after notification that they are ready for shipment. Regulations about taking delivery in due time remain unaffected.

**4.3** The customer has to inform us immediately if goods are damaged in transit and see to it that the forwarding agent reports on the facts.

**4.4** At the time goods are taken over by the transport agent or carrier, latest however when goods leave the factory or warehouse, the risk is passed on to the customer.

**4.5** Incoterms 1990 are the rules for the interpretation of trade terms.

**4.6** We are allowed to make partial shipments. The customer commits himself to accepting and paying a partial shipment if reasonable and not interfering with any of his contractual rights.

**4.7** If not agreed otherwise goods are shipped unpacked and unprotected against rust. Packing material made of paper, PVC, jute, etc. as well as non-returnable reels and pallets are not taken back. Reels on loan are invoiced and must be fully paid. If returned to us in good condition within 2 months they will be credited to the customer's account with two thirds of the value invoiced.

**4.8** For assembly and erection works our travel allowances and expenses for journey and stay have to be reimbursed. The customer has to make sure that the works can be carried out without interruption and all preliminary works like foundations, electric connections and suchlike will be at our disposal free of charge.

### 5. DELIVERY TIME AND DELAYED SHIPMENT

**5.1** Agreed delivery times are only valid on condition that all order details have been clarified in time and the customer has fulfilled all his obligations. On expiry of the agreed delivery time an extension is granted without further notice. It shall be of the same time as the original delivery time however not longer than 21 days. Only after expiry of the extended delivery time, we can be put in delay.

**5.2** If the customer does not timely fulfil his contractual obligations e. g. opening of a letter of credit, supply of any required domestic or foreign certificates, transfer of an advance payment, checking of drawings and samples etc. we are entitled to postpone our delivery time according to production requirements regardless of our rights resulting from the delay caused by the customer.

**5.3** The moment of shipment ex works is of prime importance to the determination whether the delivery time was kept. If it is not our fault that goods cannot be shipped in time the notice that goods are ready for shipment is proof for having respected the delivery time.

**5.4** If unforeseen events, e. g. war, act of God, natural phenomenon, accident, production hold-up and delay of supply of essential raw material hinder us or our suppliers to fulfil contractual obligations, the delivery time becomes extended for the period of obstruction plus a reasonable time to get going again. We can withdraw from the contract if delivery becomes impossible or unreasonable. The same right applies to the customer if acceptance of goods becomes unreasonable because of the delay. Strikes and lockouts are obstructions we cannot be held responsible for.

Delivery time is extended for a period during which the customer is causing a delay. If we cause the delay the customer can withdraw from the contract after having granted us a reasonable extension period by written notice. Same applies to us if shipment of goods becomes impossible because of legitimate reason.

We commit ourselves to informing the customer immediately about the occurrence of an unforeseen event.

**5.5** The right of withdrawal from the contract to which the customer and ourselves are entitled according to section 5.4 only applies to the unfulfilled part of the contract. If the customer however cannot use the partial shipments already received he is entitled to withdraw from the entire contract.

**5.6** Any other rights and in particular claims for damages can be exercised by the customer only if we are guilty of negligence or having acted with intent.

## **6. FAULTY MATERIAL AND WARRANTY**

**6.1** In case of an immediate and justified claim of faults we replace or repair the goods (within Germany only!) thus excluding customer's right to any further claim. If the goods are not repaired or replaced within a reasonable time or their repair or replacement has failed again the customer is entitled to a reduction of the goods' value or to demand withdrawal from contract. We can refuse the elimination of defects as long as the customer has not paid the unclaimed part of the shipment. Any further claims by the customer in particular those for damages and warranty which do not relate to the delivered item itself are excluded. We can only be held responsible for material lacking warranted quality if such warranty specially serves the purpose to protect the customer against the damages occurred.

**6.2** The customer must offer us the opportunity by inspection to become convinced that there is a defect by placing at our disposal the faulty material or samples of it.

**6.3** If an inspection of goods was carried out claims regarding defects which could have been detected during inspection are excluded.

**6.4** Warranty is excluded in case of damages resulting from natural wear, poor or careless handling, excessive use, unsuitable operating material, any natural influence or non-observance of our technical guidelines, assembly instruction and application instructions.

**6.5** Warranty claims lapse within 3 months after detection of a defect, latest however within 12 months after receipt of goods.

## **7. RESERVATION OF TITLE**

**7.1** All goods delivered shall remain our property (reserved goods) until all our claims have been met in full, in particular any claim in respect of a current debit balance in our favour to which we are entitled within the framework of the existing business relationship. This shall also apply to all future or qualified claims, e. g. claims arising from reverse bills.

**7.2** Any processing or finishing of the reserved goods shall be deemed to have been conducted on our behalf as manufacturers within the understanding of § 950 BGB (German Civil Code) and without subjecting us to any obligation. The chattel so processed or finished shall be deemed to constitute reserved goods within the understanding of sub-section 7.1.

**7.3** In case in which reserved goods are processed, connected or otherwise incorporated by the customer with goods from different owners, we shall be entitled to co-ownership of the new chattel in the same proportion as that of the invoice value of said reserved goods to that of the other merchandise processed.

In cases in which our property is deemed extinguished as a result of such connection, incorporation or processing the customer agrees to assign in advance his proprietary or expectant rights to the new part or object the total of which shall be in the same proportion as that of the invoice value of the reserved goods to the invoice value of the other materials used. The customer also agrees to hold such claims on our behalf free of charge. Our rights to co-ownership shall constitute reserved goods within the understanding of sub-section 7.1.

**7.4** The customer shall only be entitled to resell or otherwise dispose of the reserved goods in the ordinary course of business exercised under his standard business terms and only if he is not in default of any payment. This authorization is also subject to the provision that he agrees to a similar reservation of title with his customer, and that any claims arising from said resale shall pass to ourselves in accordance with sub-

section 7.5 and 7.8. The use of reserved goods to fulfil a contract for materials and services shall also constitute such a resale.

**7.5** The customer assigns in advance any claim accruing to him from the resale of the reserved goods. These claims serve as security to the same extent as do the reserved goods under sub-section 7.1.

**7.6** If the reserved goods are sold by the customer together with other merchandise, the claim assigned to us shall be in proportion of the invoice value of the reserved goods to the invoice value of the other merchandise. In the case of goods resold in which we have the right of co-ownership as specified under sub-section 7.3 the claim corresponding to the share of co-ownership must be assigned to us.

**7.7** The customer shall retain the authority to collect such assigned claims accruing from the resale of reserved goods until being revoked by us. Upon request he shall immediately inform his customers of the assignment of such claims – if not already done by us – and provide us with all documents and information necessary for their collection.

**7.8** The customer shall under no circumstance be authorized to dispose of claims by assignment. This shall also apply to factoring, to which the customer is not even entitled to factoring under the terms of our collection authority.

**7.9** The customer must inform us immediately of any attachment or other prejudice in favour of a third party.

**7.10** Should the value of securities existing in our favour exceed the total of claims by more than 20 % we shall at the request of the customer release such securities at our discretion.

**7.11** If a customer is in breach of contract, e. g. default of payment, we are entitled to take back the reserved goods or to demand the assignment of our customer's claim against a third party. The taking back or seizure of reserved goods by us does not represent a withdrawal from contract if not laid down otherwise by the Hire Purchase Law.

## **8. GENERAL LIMITATION OF LIABILITY**

If no separate agreement has been reached to the contrary in above stipulated General Conditions of Business we are liable for indemnity arising from the infringement of contractual or non-contractual obligations only in the event of wilful intent or severe negligence.

We can only be held responsible for wilful intent or severe negligence of our non-executive personnel if the infringement concerns an essential contractual obligation.

According to the Product Liability Law above provision shall not apply to claims arising from personal injury or damage to privately used objects. Goods must be used in compliance with the current safety regulations as well as standards and our operating and mounting instructions. We cannot be held responsible for damages arising from an infringement of these provisions.

## **9. LAW APPLICABLE**

The law of the Federal Republic of Germany shall apply to the above stipulated General Conditions of Business excluding the uniform laws on international purchase and conclusion of contracts of movable commodities.

## **10. PARTIAL INOPERATIVENESS**

If any terms of the contract become inoperative all others remain in effect. An inoperative term can be replaced by any arrangement of which the aim and object come legally close to the invalid term in view of the economical effectiveness.

## **11. PLACE OF PERFORMANCE AND JURISDICTION**

The place of performance and exclusive jurisdiction for all sales including those on the basis carriage paid, fob, etc. shall be Memmingen/Bavaria if both parties are fully qualified businessmen (§ 29 and 38, ZPO). We are however also entitled to take proceedings against the customer at his place of jurisdiction.