

# **General Terms and Conditions of Supply of pewag engineering GmbH**

Definitions: For the purposes of these General Terms and Conditions of Supply, "seller" refers to pewag engineering GmbH and "purchaser" refers to the natural or legal person with whom pewag engineering GmbH enters into a business relationship.

## **1. General**

- 1.1 These General Terms and Conditions of Supply apply with the exclusion of any terms and conditions of business of the purchaser for any agreement concluded between the purchaser and the seller, and to any follow-up orders in the case of ongoing business relations. Any amendments to these General Terms and Conditions of Supply of the seller require the express written agreement of the seller to be valid. Any counter-confirmations to the seller's order confirmation which differ from this are ineffective.
- 1.2 The terms and conditions for the supply of goods detailed below also apply analogously to services.
- 1.3 In addition, assembly works are also subject to the terms and conditions of assembly of the Association of the Austrian Machinery and Metalware Industries [Fachverband der Maschinen- und Stahlbauindustrie Österreichs] in the respective valid version, of which the seller has copies which he can make available at any time upon request.

## **2. Conclusion of agreement**

- 2.1 The seller's quotations are subject to confirmation and are non-binding. The agreement counts as concluded when the seller has received the order and sent out a written order confirmation, and this has not been verifiably contradicted by the purchaser within 5 (five) days. Silence on the part of the seller does not count as acceptance.

## **3. Plans and documents**

- 3.1 The details of weight, size, volumetric capacity, price, performance etc. contained in catalogues, brochures, circulars, advertisements, illustrations and price lists etc. are only definitive if expressly referred to in the quotation and/or order confirmation.
- 3.2 Plans, sketches, cost estimates and other technical documentation, which can also form part of the quotation, and similarly samples, catalogues, brochures, illustrations etc., always remain the intellectual property of the seller. Any use, duplication, reproduction, dissemination and distribution to third parties, publishing or presentation may only take place with the written authorisation of the owner.

## **4. Packaging**

- 4.1 In the absence of any written agreement to the contrary
  - a) the seller's indicated prices do not include packaging;
  - b) and packaging takes place in the usual way customary in the trade, so as to prevent damage to the goods in transit under normal transport conditions to the agreed destination, at the purchaser's expense.

## **5. Transfer of risk**

- 5.1 Unless the seller and purchaser have agreed otherwise in writing, the goods count as sold "ex works" (willingness to collect) and the risk and hazard are transferred to the purchaser at this time.
- 5.2 Other INCOTERMS in the respective current version from the ICC (International Chamber of Commerce) (currently: INCOTERMS 2000) apply only on the basis of an express written agreement and to the extent laid down therein.

## **6. Delivery period**

- 6.1 The delivery periods referred to by the seller in price lists, order confirmations or elsewhere are unbinding unless it has been agreed in writing that they are fixed.
- 6.2 In the absence of any agreement to the contrary, the delivery period begins at the latest of the following times:
  - a) Date of order confirmation;
  - b) Date of fulfilment of all the technical, commercial and financial requirements which it has been agreed shall apply to the purchaser;

c) Date on which the seller receives any prepayment which it has been agreed shall be paid before the delivery of the goods, and/or any guarantee of payment which is to be issued or otherwise has been opened.

Unless expressly agreed in writing otherwise or differently, the seller is entitled to undertake the delivery in one or more partial deliveries and also to deliver before an agreed delivery deadline. Irrespective of the remaining provisions of these General Terms and Conditions of Supply, every delivery counts as a separate agreement. An impairment of performance in respect of one or more deliveries does not affect the remaining agreement.

- 6.3 Unless otherwise agreed in writing, delivery takes place at the seller's discretion with no warranty; shipments are sent uninsured and at the expense and risk of the purchaser.
- 6.4 Incidents of force majeure, or other unforeseeable events which prevent delivery being made on time, entitle the seller to extend the delivery period by the duration of the disruption and with an appropriate lead time, or to withdraw partly or fully from the agreement, with the exclusion of all claims by the purchaser (in particular claims for compensation).
- 6.5 In the event that the seller does not comply with a delivery deadline, the purchaser must set an appropriate period of grace of at least 4 (four) weeks in writing. If this period of grace elapses without being used, or the seller declares that he is unable to supply, the purchaser is entitled to withdraw from the agreement in respect of the delayed delivery quantity. This withdrawal must be made within 1 (one) week of the period of grace elapsing or after a statement to this effect has been provided in writing by the seller.
- 6.6 The purchaser is only entitled to any rights over and above the right of withdrawal, and in particular rights to compensation, if the delay in delivery is due to intent or gross negligence on the part of the seller. In any event, sub-suppliers used by the seller for fulfilling his contractual obligations do not count as vicarious agents in the sense of § 1313a of the Austrian Civil Code [Allgemeines Bürgerliches Gesetzbuch ABGB].
- 6.7 If the purchaser refuses to accept the goods, then irrespective of his obligation to make payment, he has to bear all the costs of transport and storage. If there is a default in taking delivery the purchase price falls due for payment immediately. Irrespective of the purchaser's rights to report any defects in writing, defects do not entitle him to refuse acceptance. Delivery obligations and delivery periods are suspended in any event so long as the purchaser is in arrears with his obligations.

## **7. Acceptance inspection**

- 7.1 Insofar as the purchaser wishes to have an acceptance inspection, this must be expressly agreed in writing with the seller when the agreement is concluded. Unless any provisions to the contrary have been made, the acceptance inspection is to be carried out at the place of production, or at a place to be specified by the seller, during the seller's normal working hours. The general practice of the branch of industry concerned in respect of acceptance inspection will be definitive.

The seller will notify the purchaser in good time of the acceptance inspection so that the latter can be present at this examination or arrange for a representative with full power of attorney to attend.

If during the acceptance inspection the delivery item turns out to be contrary to the agreement, the seller will rectify any defects and restore the delivery item to a state in accordance with the agreement. The purchaser may demand a repeat inspection only in cases of substantial defects.

In association with the acceptance inspection, an acceptance report is to be drawn up. If the acceptance inspection shows the delivery item to be in conformity with the agreement and of flawless functional efficiency, in any event this must be confirmed by both contractual parties. If despite being advised in good time of the acceptance inspection by the seller, neither the purchaser nor his authorized representative is present, the acceptance report is to be signed by only the seller. The seller will in any event provide the purchaser with a copy of the acceptance report, whose correctness the purchaser may no longer contest if neither he nor his authorized representative was able to sign.

Unless otherwise agreed, the seller is to bear the costs of the acceptance inspection which has been carried out. However, the purchaser is to bear the costs he or his authorised representative incurs in connection with the acceptance inspection, such as travel and subsistence costs and any allowance for special expenditure.

## **8. Price**

- 8.1 Unless otherwise agreed the prices apply ex works the seller's plant excluding loading.
- 8.2 Prices are based on the costs at the time of issuing the price unless anything different has been agreed. If costs have changed by the time of delivery, these changes are to be at the cost or to the

benefit of the purchaser.

## **9. Payment**

- 9.1 Payments are to be made according to the agreed payment terms. If no payment terms have been agreed, one third of the price is due on receipt of the order confirmation, one third half way through the delivery period and the remainder on delivery. Independently of this, in any event the VAT included in the invoice is to be paid at the latest by 30 days after invoicing.
- 9.2 In the event of doubt, an agreed payment period runs from the date of invoicing. When this due payment date is exceeded, interest on late payments is calculated by the seller in accordance with the statutory provisions amongst fully qualified traders, even if the delay in payment is due to the purchaser's bank. The day on which the money is received in the seller's bank account counts as the time of fulfilment.
- 9.3 The purchaser is not entitled to withhold payments due to warranty claims or other counterclaims that have not been recognised by the seller.
- 9.4 If the purchaser is in arrears with a payment or any other performance, then the seller may either insist on fulfilment on the agreement and
- a) delay the fulfilment of his own obligations until the late payments or other performances have been settled,
  - b) call for an appropriate extension of the delivery period,
  - c) render the entire still outstanding purchase price due for payment,
  - d) to the extent that no exonerating reason exists on the part of the purchaser in the sense of Point 14 of these General Terms and Conditions of Supply, declare his withdrawal from the agreement after expiry of an appropriate period of grace.
- 9.5. The purchaser must still reimburse the seller for any reminder costs or operating costs which he has incurred as constituting further damage caused by delay.
- 9.6. If at the expiry of the period of grace according to 9.3 the purchaser still has not supplied the payment owed or other performance, then the seller may withdraw from the agreement by written notification. If the seller so requests, the purchaser must return to the seller any goods which have already been supplied and reimburse him for the loss of value of the goods which has already taken place and compensate him for all justified expenses which the seller has had to make for the implementation of the agreement. In respect of any goods which have not yet been supplied, the seller is entitled to make the finished or installed parts available to the purchaser and to demand the corresponding portion of the sales price for them.
- 9.7. Bills of exchange and cheques will only be accepted as a means of payment after a separate written agreement, and exclusively subject to the receipt of the appropriate equivalent value and provided the customer covers all interest, charges and costs incurred. Any bank charges incurred, and in particular discount interest, collection charges, fees for bills of exchange and cheques (as well as charges) are to be borne by the customer. No guarantee will be assumed for the timely and proper presentation, reclamation or collection of bills of exchange or cheques.

## **10. Retention of ownership**

- 10.1 The goods supplied remain the property of the seller until the purchase price has been paid in full together with any interest on late payments, reminder costs and collection expenses that have already been incurred, and possible other costs.
- 10.2 The purchaser may sell the goods on to third parties in the normal course of business under the following conditions:  
Irrespective of the status in which the goods are being resold by purchaser, purchaser assigns already with acceptance of the goods all claims which will arise from resale to his clients and all side claims in this context to seller. This assignment shall be notified by purchaser to his client simultaneously with resale of the goods and shall also be noted in the business books. Upon demand of seller purchaser shall further immediately inform seller as to whom such goods have been resold respectively which claims arose from such resale and shall hand over to seller any and all documents necessary to assert the claim.
- 10.3 Seller is entitled to inform purchaser's clients of the assignment. Purchaser shall indemnify seller for any and all damages occurred because of non-compliance with this obligation. Seller expressly declares acceptance of this assignment. Purchaser is nevertheless entitled to collect the claims for seller on trust. In case of payment delay of purchaser, purchaser is obliged to hand over any and all documents which are necessary to collect the claims, in which case the trustee relationship is deemed as revoked.

- 10.4 The purchaser must immediately inform the seller in writing of any compulsory enforcement proceedings which are opened in respect of the goods which are subject to retention of ownership or the assigned claims, and must hand over the documents which are necessary to object to these proceedings.
- 10.5 If payment is suspended, or if bankruptcy proceedings or judicial or out of court settlement proceedings are requested or opened, the purchaser is obliged to immediately return the goods which are subject to the retention of ownership to the seller at his own expense.
- 10.6 In case of delayed payment SVP is entitled, to dispossess from the custody of CUSTOMER all goods under retention of title. CUSTOMER will in this case not claim protection of possession and gives already consent to the removal of the goods.

## **11. Warranty**

- 11.1 The seller is obliged to correct any defects adversely affecting the serviceability of the goods within a period of twelve months after transfer of risk if these are due to material defects or faulty workmanship.
- 11.2 The purchaser has the right to claim under warranty only if he has fully complied with all his contractual obligations in respect of payment or any other contractual obligations. The purchaser may only invoke the warranty if he immediately informs the seller in writing of the defects which have emerged. It is mutually agreed that § 377 Section 4 of the Code of Enterprises [Unternehmensgesetzbuch UGB] is excluded and in its place it is agreed that the purchaser's rights count as guaranteed only when the seller is notified in writing of any defects. The supposition rule [Vermutungsregel] contained in § 924 of the Austrian Civil Code is excluded. When the seller has been informed in this way and the defects are to be corrected by the seller according to the provisions of this clause, the seller will according to his choice:
- a) remedy the defective goods on-site;
  - b) have the defective goods or the defective parts returned to him for rectification;
  - c) replace the defective parts;
  - d) replace the defective goods.
- 11.3 If the seller has the defective goods or parts returned for the purpose of rectification or replacement, then unless otherwise agreed the purchaser will take over the costs and risk of transport. Unless otherwise agreed, the rectified or replacement parts will be sent back to the purchaser at the cost and risk of the seller.
- 11.4 The defective goods or parts which have been replaced according to this point will be available to the seller.
- 11.5 The seller only has to pay for the costs of rectification of defects undertaken by the purchaser himself if he has given his written agreement to this.
- 11.6 The seller's duty of warranty applies only to defects which occur under the operating conditions specified and in normal use. In particular it does not apply to defects caused by incorrect assembly by the purchaser or individuals acting on his instruction, poor maintenance, repairs or alterations of poor quality or carried out without the written agreement of the seller by another person than the seller or individuals acting on his instructions, or normal wear and tear.
- 11.7 For those parts of the goods which the seller has obtained from a subcontractor specified by the purchaser, the seller accepts liability only in the context of the warranty claims to which he himself is entitled in respect of the subcontractor.
- 11.8 If goods are produced by the seller on the basis of construction specifications, drawings or models belonging to the purchaser, the seller's liability does not extend to the correctness of the construction, but only to the fact that implementation took place in accordance with the details provided by the purchaser. In such cases the purchaser must indemnify the seller and hold him harmless of any breach of industrial property rights. The seller accepts no guarantee when taking over repair orders or alterations or amendments to old or third party goods, or for the supply of used goods.
- 11.9 From the start of the warranty period, the seller assumes no liability beyond that which is specified in this clause.

## **12. Liability**

- 12.1 It is taken as expressly agreed that the seller does not have to provide the purchaser with any compensation for injuries to individuals, for damage to goods which do not form the subject of the agreement, for other damages or for loss of profits, unless it is clear from the circumstances that the seller has committed gross negligence. The shift in the burden of proof in accordance with § 1298 of the Austrian Civil Code is excluded by the parties.

12.2 The purchase object offers only the security which can be expected based on the regulations for approval, operating instructions, the seller's instructions on handling the purchase object – especially in respect of any prescribed inspections – and any other information provided.

12.3 All claims for compensation due to defects in supplies and/or services which are not expressly acknowledged by the seller must be enforced judicially within one year of the expiry of the contractually established warranty period, otherwise the claims will expire.

### **13. Consequential damages**

13.1 Any liability by the seller towards the purchaser for production shutdown, loss of profits, downtime, loss of contract or any other economic or indirect consequential damages is excluded.

### **14. Force Majeure**

14.1 The parties are fully or partly released from fulfilling the agreement by the agreed deadline if they are prevented from doing so by incidents of force majeure. Incidents of force majeure are solely such incidents as cannot be foreseen or prevented by the parties and which do not originate within their sphere. However, strikes and industrial disputes are to be considered as incidents of force majeure.

14.2. However, the purchaser who is hindered by an incident of force majeure can only invoke the existence of force majeure if immediately, and at the latest within five calendar days, he sends the seller a registered letter outlining the start and the forecast end of the hindrance with a statement of the causes, the anticipated effects and the duration of the delay and which is confirmed by the respective government authorities and chamber of trade of the country of supply.

14.3. In the event of force majeure, the purchaser must make all efforts to remove or reduce the difficulties and foreseeable damages and must keep the seller constantly informed of these, otherwise the purchaser will become liable for damages.

14.4. Deadlines or periods of time which can not be complied with due to the effects of the force majeure will be extended as a maximum by the duration of the effects of the force majeure, or if necessary by a period of time to be agreed by a mutual arrangement.

14.5. If an incident of force majeure lasts for longer than four weeks, the purchaser and seller will negotiate to try to find a way to regulate the consequences in terms of handling the agreement. If no amicable solution can be reached in this way, the seller may withdraw fully or in part from the agreement.

### **15. Data protection**

15.1 The seller is entitled to store, communicate, process and delete personal data relating to the purchaser in the context of business dealings.

15.2 The parties undertake to keep the knowledge they acquire from their business dealings absolutely secret in respect of third parties.

### **16. Miscellaneous**

16.1. In the event of individual provisions of these General Terms and Conditions of Supply being ineffective due to obligatory statutory provisions, this will not affect the binding nature of the remaining provisions and the legal transactions concluded on the basis of these General Terms and Conditions of Supply. The ineffective provision will be replaced by an effective provision whose content in terms of its financial purpose comes closest to the purpose sought by the respective ineffective clause.

16.2. All agreements between the seller and the purchaser must be made in writing. Verbal subsidiary agreements or agreements made by phone are not valid. Accordingly, alterations and amendments to these General Terms and Conditions of Supply are only effective if they are agreed in writing. The requirement for the written form can also be satisfied by the use of fax.

### **17. Place of jurisdiction, applicable law, place of fulfilment**

17.1 The place of jurisdiction for all disputes arising directly or indirectly from this agreement is the appropriate court with jurisdiction for Graz. However, the seller is also entitled to invoke a different court which has jurisdiction for the purchaser.

17.2 Austrian law is to apply for disputes arising from this agreement, and the UN Convention on Contracts for the International Sale of Goods is excluded. The language of the agreement is German.

17.3 The place of fulfilment for both sides is the seller's head office, even if in accordance with the agreement the handover takes place at a different place.