

# General Terms of Business (GTB) of pewag Suisse AG

## 1. APPLICABILITY OF THESE GTB

**1.1** All deliveries and services from pewag Suisse AG (hereinafter referred to as "seller") are governed exclusively by these general terms of business. Any other agreements are only valid if made in writing. The present terms of business take precedence over any possible other terms of business claimed by the customer.

**1.2** The present terms of business particularly apply to contracts handling the sale and/or the delivery of movable goods (hereinafter referred to as "merchandise"), regardless of whether the seller manufactures the merchandise by their own hand or if it is purchased by sub-suppliers. Furthermore, the sales contract is subject to the regulations of the Swiss Code of Obligations (art. 184 et seqq. CO). If the merchandise consists of custom-made products, the regulations contained in the contract for work and services (art. 363 et seqq. CO) are to be observed.

**1.3** The current version of these terms of business shall also apply as a master agreement to all future contracts handling the sale and/or delivery of movable goods to the same customer, without the need to refer to the GTB in every single case.

**1.4** Trade terms shall be governed by the latest version of the Incoterms valid at the time the contract is concluded.

## 2. PRECONDITIONS FOR THE CONCLUSION OF A CONTRACT

**2.1** Offers made by the seller can be accepted by the customer verbally via phone or in writing via post, fax or email. The seller will then accept the order in writing by sending a fax or an email.

**2.2** The contents of catalogues, technical documentation (e.g. drawings, projects, calculations, references to DIN standards), product descriptions or other documents given to the customer are non-binding and do not count as offers. This principle also applies if the documents are transmitted in electronic format.

## 3. DISPATCH, TRANSFER OF RISK, ACCEPTANCE, DEFAULT OF ACCEPTANCE

**3.1** Delivery is ex warehouse which also acts as place of performance. At the customer's request and expense, the merchandise can also be dispatched to another destination (sale by delivery to a place other than the place of performance). Unless otherwise agreed, the seller is entitled to decide on the type of dispatch, especially on carriers, dispatch routes and packaging.

**3.2** The seller is authorised to make partial deliveries. The customer is bound to accept and pay for partial deliveries, unless the acceptance of a partial delivery should be unreasonable for the customer or impair their contractual rights.

**3.3** The risk of accidental loss or accidental deterioration of the merchandise is transferred to the customer no later than at the moment of delivery. If a formal acceptance has been agreed upon, the moment of acceptance shall be decisive for the transfer of risk. If the customer is in default of acceptance or fails to act in cooperation or if the loading or transportation of the merchandise is delayed as a result of circumstances for which the customer is responsible, the object of purchase shall be deemed to have been properly delivered and accepted on this date. In such a case, the seller is entitled, at the customer's risk and expense, to store the merchandise at their sole discretion, to undertake all steps which they regard necessary for preserving the goods and to invoice the merchandise as having been delivered. This also applies if merchandise notified as being ready for delivery isn't retrieved within 4 days. The statutory provisions regarding default of acceptance shall remain reserved (Swiss Code of Obligations, art. 91 et seqq.).

**3.4** In the case of sale by delivery to a place other than the place of performance, the risk of accidental loss or accidental deterioration of the merchandise and the risk of delay are transferred with the delivery of the goods to the carrier, the haulage contractor or any other third party appointed to handle the dispatch.

**3.5** In the event of damage in transit the customer is requested to inform the seller immediately and to initiate a damage assessment with the carrier.

**3.6** Unless not in line with normal business practice or otherwise agreed, the merchandise is delivered unpacked and without anti-corrosive protection. Packaging material made of paper, plastic, jute fibre, etc. and disposable pallets and coiling devices will be charged and will not be taken back. Rental coiling devices are

invoiced at the customary rates and must be paid for. The return consignment is free of charge and, after arrival at the delivery plant and assessment of its good condition, a credit of 2/3 of the applicable amount stated in the invoice will be granted within 2 months. Immediately after unloading, exchangeable packaging equipment such as skeleton containers and euro pallets must be returned to the freight forwarding service provider in exchangeable condition (Epal). In case of damage or if the return to the carrier is not carried out in due time, the customer is obliged to pay the customary price to the seller.

## 4. PRICES AND TERMS OF PAYMENT

**4.1** Unless otherwise agreed, our prices are ex works and subject to the addition of the legally applicable value added tax (VAT).

**4.2** Unless otherwise agreed, payment will become due within 30 days of the date of delivery ex works, in full without deduction. The customer is authorised to make a deduction (discount) on the amount of the invoice only if expressly agreed on beforehand and only if the customer is not behind in payment of previous invoices.

**4.3** Upon the expiry of the aforementioned terms of payment the customer will be in default of payment. From the time the customer enters into default, we shall be entitled to demand default interest to the amount of 5% above the purchase price. We expressly reserve the right to claim further compensation for damages caused by delay.

**4.4** Any right of offset on the part of the customer is excluded. The customer is authorised to make an offset only if the counterclaim has been established by a court of law as final, absolute and undisputed.

## 5. DELIVERY DATES, DELAYS IN DELIVERY

**5.1** The delivery dates indicated by the seller are non-binding unless a binding delivery date was expressly confirmed in writing. These dates can be appropriately delayed in the event of obstacles resulting from circumstances for which the seller cannot be held responsible, such as natural disasters, mobilisation of troops, war, riots, epidemics, accidents, illness, labour conflicts (strikes in particular), etc. If these obstacles make the delivery impossible or unreasonable for the seller, the latter can withdraw from the contract. The same right is granted to the customer if the delay in delivery makes the acceptance of goods unreasonable for them. Both the seller's and the customer's right to withdraw from the contract basically only applies to the part of the contract which has not yet been fulfilled. If partial deliveries already provided cannot be of use to the customer, they are entitled to withdraw from the entire contract.

**5.2** As the seller sources goods in whole or in part from other manufacturers, the delivery of merchandise is subject to correct and timely delivery by subcontractors and manufacturers. If the seller cannot meet the agreed upon deadlines due to the delay of a third party supplier, the customer will be immediately informed and, if and in so far as a later delivery is possible, a new delivery date will be established. In the event that a subsequent delivery should not be eligible (impossibility of fulfilment) or that the service cannot be rendered even within the newly notified delivery date, the seller is authorised to cancel the contract partially or entirely when the non-observance of the terms of delivery is due to the behaviour of a third party. In this case, amounts already paid by the customer will be immediately refunded by the seller. The same right of contract cancellation applies to the customer if, due to the delay, acceptance of the merchandise by the customer has become unreasonable. Regarding the extent of the right of withdrawal, cfr. point 5.1.

**5.3** In the case of the seller being in default of fulfilment of contract obligations, without the delay being caused by the behaviour of a third party or by force majeure, the legal consequences follow the statutory provisions described in art. 107 et seqq. of the Swiss CO. The application of art. 190 CO (presuming that the customer, in the case of a commercial fixed date transaction, rejects the delivery and demands damage compensation for non-fulfilment) and of art. 377 CO (right granted to the customer to terminate the contract at any time, also in the case of individually customised products) is explicitly excluded.

**5.4** If the customer does not perform contractual obligations, including cooperation or auxiliary obligations, in particular opening of a letter of credit, provision of national or foreign certificates, advance payment, review of drawings, samples or similar, the seller is entitled to delay the time of delivery based on the requirements of their production process.

## **6. DEFAULT ON PAYMENT**

**6.1** If the customer delays payment of the purchase price, the seller is entitled to set a reasonable extended date for belated payment. If the outstanding payment is not made before the expiry of this deadline, the seller can commence action seeking the performance of obligation and/or assert claims for damage due to the delay, but they can also, if declaring so immediately, withdraw from the contract and charge expenses for services already rendered. The legal provisions on the dispensability of setting a deadline (art. 108 CO) shall remain reserved.

**6.2** If after the conclusion of the contract it becomes clear that the seller's claim to payment of the purchase price is at risk through insufficient ability of the customer to pay (e.g. by an application for the opening of insolvency proceedings), the seller is authorised to demand guarantee of the purchase price. If the customer is unable or unwilling to comply with this request, the seller is entitled to proceed as described in point 6.1, even before the due date of payment of the purchase price. In the case of contracts concerning the delivery of custom-made products, the seller has the right to declare their withdrawal from the contract at once.

## **7. WARRANTY AND LIABILITY**

**7.1** Unless stated otherwise in the following, the customer's rights in the event of material defects and defects of title (including non-performance and defective performance), as well as in the case of improper assembly or faulty assembly instructions, shall be governed by the provisions of law (Swiss CO, art. 97 et seqq., art. 192 et seqq. and art. 197 et seqq.).

**7.2** Claims for defects are not admissible in the case of insignificant deviation from the quality agreed upon or minor impairment of usability. The specific properties of the merchandise that have been agreed upon by contract are taken as a basis for the assessment of deficiencies. In the event that no such agreement has been made, deficiencies shall be assessed with reference to the usually expected properties. The seller assumes no liability for any public statements by the manufacturer or other third parties (e.g. advertising messages).

**7.3** Claims for defects may only be made if the customer has duly fulfilled their obligation to inspect the merchandise and has notified the seller of the defects (Swiss CO, art. 201). If a defect is detected during the inspection or at a later date, the seller must be immediately informed in writing. The notification is considered to be immediate if it takes place within two weeks; timely dispatch of the notification shall be sufficient to keep this deadline. If the customer fails to conduct the proper inspection and to notify defects as stipulated above, any liability of the seller for defects not notified shall be excluded.

**7.4** If a delivered item is defective, the seller is entitled to remedy the defect by effecting repairs (respectively to rework custom-made products) or by subsequently supplying a faultless item. The seller's right to refuse the selected manner of supplementary performance in accordance with the statutory provisions remains unaffected (e.g. in case of insignificant defects). Any repair or reworking of products is considered to have failed only after the second unsuccessful attempt at remedy.

**7.5** The seller is entitled to make the supplementary performance conditional upon the customer paying the purchase price due. However, the customer is authorised to retain a portion of the purchase price appropriate in relation to the defect.

**7.6** The customer must give the seller the necessary time and opportunity to eliminate the defect or to deliver new faultless merchandise and, in particular, the goods about which a complaint was made must be handed over for inspection purposes. In the event of a replacement delivery, the customer is bound to return the defective goods in accordance with statutory provisions.

**7.7** Expenses arising in connection with the inspection and supplementary performance, in particular as regards the costs for transport, travel, labour and materials, shall be borne by the seller if a defect does indeed exist. Should, however, the complaints by the customer prove to be unfounded, the seller can demand the incurred costs be reimbursed by the customer.

**7.8** If the seller's supplementary performance fails or the deadline imposed by the customer expires without success or if according to the statutory provisions a supplementary performance is unnecessary, the customer is entitled to rescind the contract (redhibition) or to demand a reduction of the purchase price. In the case of minor defects, the customer is only entitled to demand a reduction, while in the case of insignificant defects any reduction of the purchase price is excluded.

**7.9** The customer may only assert damage claims or demand compensation for wasted expenditure in accordance with point 5.3, any other claims are excluded.

## **8. LIMITATION OF LIABILITY**

Liability on part of the seller is excluded to the extent permitted by law (Swiss CO, art. 100, art. 192 para. 3 and art. 199). The seller shall therefore be liable only for damages due to unlawful intent or for gross negligence and deliberate concealment of defects. This limitation of liability does not apply if the seller has warranted to provide merchandise with specific properties. The same applies to claims of the customer covered by the Federal Law on Product Liability.

## **9. OBLIGATION TO CONFIDENTIALITY, DATA PROTECTION AND COPYRIGHTS**

**9.1** Both contractual parties are obliged to keep all information shared in connection with their business relationship in the strictest confidence. Both during and after their collaboration no information must be passed on to uninvolved third parties. All data are processed only to the extent that the data are required for the fulfilment of the contract between the two parties.

**9.2** Copyrights for information material given to the customer remains in any case with the seller. In particular, the seller expressly reserves the proprietary right to quotations, drawings and other documents. These documents must not be made available to any third party and must be returned to the seller immediately upon first request or in the case the order not being placed with the seller.

## **10. SIZES, WEIGHTS, QUALITY GRADES**

**10.1** Standard-related information always refers to the most recent valid version of the standard.

**10.2** Discrepancies/deviations from sizes, weights and quality grades in accordance with DIN or common practice are permitted. Any other deviation shall require a separate agreement.

**10.3** Technical details and descriptions of delivery items are non-binding. The seller reserves the right to introduce design modifications as far as the latter can be considered reasonable for the customer.

## **11. SEVERABILITY CLAUSE**

If a regulation of this contract should be invalid or become invalid, or if the contract presents a gap, the legal effectiveness of the other regulations remains untouched. In replacement of the invalid regulation, an effective provision that most closely achieves the commercial purpose intended by the contracting parties shall apply as if it were agreed from the beginning. The same principle applies in the event of a gap.

## **12. GOVERNING LAW AND PLACE OF JURISDICTION**

**12.1** The present General Terms of Business (GTB) and any legal relationship between the seller and the customer shall be subject to the Swiss Law.

**12.2** The responsibility for the judgment of disputes between the contracting parties lies with the courts of law where the head office of the seller is situated. However, the seller is also entitled to appeal to the courts of justice at the domicile of the customer.