

## **1. Validity, Contractual Foundations and Formal Requirements**

- 1.1 Unless otherwise agreed, these General Sales Conditions shall apply for all business relationships between us – Pantel-Elektronik AG – and our Customers. Our General Sales Conditions apply exclusively. We do not recognise other terms and conditions stipulated by the Customer unless we have agreed to their validity in writing. Without written acknowledgement, we shall not be bound by these, even if we do not expressly contradict them. The same shall apply if we make deliveries without reservation in the knowledge of the Customer's differing terms. These sales conditions shall also apply to any future deliveries, services and offers, even if they are not expressly re-stipulated.
- 1.2 The General Sales Conditions only apply to companies, legal persons under public law and separate estates under public law as defined according to section 310 (1) of the German Civil Code.
- 1.3 Our legal relationship with the Customer shall be governed exclusively by the sales contract, in written or text form, including these sales conditions. Any alterations or amendments to the contract must be made in written or text form for evidentiary purposes. This fully reflects all agreements between the contracting parties regarding the subject matter of the contract. Verbal arrangements made prior to the signing of this contract shall be replaced by the contract in written or text form, unless it is expressly stated therein that they will continue to be binding. Legally relevant declarations and notifications, required from the customer after the contract has been signed (for example the setting of deadlines, notifications of defects, declaration of cancellation or reduction), will only be valid if made in written or text form.

## **2. Offer and Contractual Object, Inspection and Procurement Obligations**

- 2.1 All offers from us are non-binding and subject to alteration unless they are explicitly declared to be binding. Orders or contracts from the Customer constitute a binding offer of contract and can be accepted by us as an order confirmation within 14 days of receipt.
- 2.2 Details of the contractual object (e.g. weight, dimensions, consumption and utility values, resilience, application, tolerances and technical specifications) as well as representations of the same (e.g. drawings and illustrations) shall apply within the scope of usual tolerances, unless a binding agreement is expressly agreed, for example if exact conformity is required for the contractually agreed purpose. Discrepancies which ensue from statutory provisions or constitute technical improvements, as well as the substitution of equivalent components, are permitted as long as they do not impair the contractually agreed purpose.
- 2.3 We reserve the property rights and copyright of all images, designs, calculations and other documents. The Customer shall not make these available to third parties without first obtaining our consent in written or text form. The documentation may only be used for its contractually agreed purpose. If negotiations do not lead to the conclusion of a contract or if documentation is no longer required in the regular course of business, the Customer shall return it to us and permanently delete any documentation provided in electronic form without receiving a specific request to do so.
- 2.4 We will inspect deliveries from suppliers for obvious defects, such as damage occurring during transport. Unless specific quality assurance procedures are agreed with us to the contrary, we are not obliged to examine deliveries from our suppliers for functional, quality or other defects.
- 2.5 Unless otherwise agreed, we will not undertake any procurement obligations over and above those specifically agreed in the contract, in particular there is no obligation to procure identical contractual objects for future deliveries. The Customer has sole responsibility for the stocking of spare parts which exceed the stocks typically expected within the scope of the warranty. Appropriate stocks should be taken into account when placing the order. Unless otherwise agreed, we are under no obligation to procure spare parts.

## **3. Prices and Payment Conditions, Customer Defence and Performance Guarantee**

- 3.1 Unless otherwise agreed, all prices are "ex works" from our place of business in Erlangen (EXW, Incoterms 2010), excluding loading, packaging and unloading costs which will be invoiced separately. Sales tax, which is not included in the price, will be shown separately at the statutory rate on the day of invoicing. Unless otherwise agreed, the Customer shall meet the costs for the transport or disposal of packaging. Unless otherwise agreed, the Customer shall meet the costs for all taxes, customs and duties arising from exports to a foreign country, either by direct payment or by reimbursing us upon presentation of supporting documents.
- 3.2 The seller's valid list prices at the time of delivery will apply, provided that the agreed prices are based on the seller's list prices and the seller's delivery should take place more than four months after conclusion of contract (minus any agreed percentage or fixed discount).
- 3.3 Unless otherwise agreed, the purchasing price will be due 10 days after the date of invoicing and delivery. However, we shall be entitled at any time to make deliveries, wholly or partially, with advance payment, also within the framework of an on-going business relationship. The Customer would be informed of this reservation upon order confirmation at the latest.

- 3.4 A discount of 2% shall apply if payment is credited within 10 days. Payment should be made free of charge to the designated account of Pantel-Elektronik AG. Should the Customer fail to make payment by the due date, interest will be charged on outstanding amounts at 5% per annum from the due date. In case of default, the possibility to claim higher interest and additional damages, including standard damage compensation according to section 288 (5) of the German Civil Code, remains unaffected.
- 3.5 The Customer is only entitled to offset claims and retention rights if his claim is undisputed or has been legally established. Rights of retention can only apply to the respective contractual relationship. In cases of defective delivery, the customer's rights remain unaffected, particularly with regard to point 7.6.
- 3.6 We shall be entitled to perform or render outstanding deliveries or services with advance payment or with a security deposit if we become aware of circumstances which are likely to substantially reduce the creditworthiness of the Customer and which could endanger the Customer's payment of our outstanding claims from the respective contract relationship (including those from other individual orders for which the same framework contract applies). Our further legal rights remain unaffected, in particular the right to withdraw according to section 321 of the German Civil Code. We can withdraw immediately in the case of contracts for the production of specific items (custom-made items); statutory regulations concerning the dispensability of setting a deadline remain unaffected.

#### **4. Delivery, Delivery Times, Partial Deliveries, Liability for Delays in Delivery, Cancellation Due to Delays in Delivery, Late Delivery and Storage Costs**

- 4.1 Unless otherwise agreed, deliveries will take place "ex-works" from our registered office in Erlangen (EXW, Incoterms 2010). Goods will be sent to a different destination at the Customer's request and expense (sales shipment). Unless otherwise agreed, we shall be entitled to determine the way in which this is carried out (in particular the transport company, shipment route, packaging).
- 4.2 Our delivery and service times shall not be considered binding unless a fixed deadline or date is expressly agreed in written or text form. Agreed times shall commence on the date of the order confirmation, once all relevant technical issues have been clarified, the Customer has provided all necessary documentation (e.g. plans, approvals, clearances) and any advance payments have been received by us. Unless a delivery time is agreed, we shall undertake to perform our services within an appropriate timeframe. Unless otherwise agreed, the dispatch of the goods, or the notification of dispatch or for collection of the goods will take place within the deadline.
- 4.3 We shall be entitled to make partial deliveries if the partial delivery can be used by the Customer for the contractually agreed purpose, if the delivery of the remaining goods is guaranteed and if the Customer incurs no additional costs or substantial additional expenditure (unless we agree to bear such costs).
- 4.4 We shall not be liable if deliveries cannot be made, or for delays in deliveries caused by force majeure or other circumstances which were unforeseen at the time of completing the contract (e.g. any type of operational disruption, difficulties in the supply of materials or energy, transportation delays, strikes, legal lock-outs, shortages of manpower, energy or raw materials, difficulties in procuring the necessary official permits, measures taken by authorities or incomplete, incorrect or late deliveries from suppliers, provided we have concluded a congruent covering transaction, neither we nor the supplier are to blame and we are not obliged to provide in the particular case). For delays of a temporary nature, the deadlines shall be extended by the period of the delay plus a reasonable start-up period. This also applies if the Customer does not fulfill his obligations correctly and punctually and thereby delays the provision of services, particularly if the Customer is in arrears with (pre)payments. We will inform the Customer of delays in delivery without delay.
- 4.5 We shall be entitled to withdraw from the contract if circumstances such as those in point 4.4 make the timely delivery or rendering of services substantially more difficult or impossible for us and the delay is not of a temporary nature. If the Customer cannot be reasonably expected to accept the goods or services as a result of the delay, the Customer can withdraw from the contract by notifying us immediately in written or text form.
- 4.6 A default in delivery shall be determined according to statutory provisions. A warning notice is required from the Customer in every case.
- 4.7 The Customer shall bear all storage costs after the transfer of risk according to point 5.1. If we undertake storage, the storage costs will be 0.25% of the invoice amount of the objects to be stored per full week of storage, not exceeding a total of 5%. We and the Customer reserve the right of assertion and verification of additional, lower or no storage costs; however, the flat rate is to be offset against further monetary claims. Any further statutory claims to which we are entitled shall remain unaffected.

#### **5. Transfer of Risk and Insurance**

- 5.1 Unless otherwise agreed, the risk for delivery according to point 4.1 shall transfer to the Customer when the goods are ready for collection at the latest. In the case of delivery involving the carriage of goods, risk is transferred upon handing the goods to the carriers, hauliers or other persons designated to deliver the consignment. If an acceptance procedure has been agreed, this shall determine the transfer of risk. Statutory provisions on contracts for services shall apply

accordingly in other respects to an agreed acceptance. The above regulations relating to transfer of risk also apply to partial deliveries or if we have undertaken other services (e.g. dispatch or installation). If the dispatch or handover is delayed due to circumstances for which the Customer is responsible, the risk is transferred to the Customer from the day on which we are ready for handover or dispatch and have informed the Customer to this effect.

5.2 Unless otherwise agreed, the delivery will only be insured at the express wish of the Customer and at his expense.

## **6. Reservation of Ownership**

- 6.1 All delivery items shall remain our property until all of our claims against the Customer in the course of the business relationship have been settled (hereinafter referred to as "reserved goods". If the combined value of the security interests to which we are entitled does not exceed the value of all secured claims by more than 10%, we will release a corresponding part of the secured interests at the customer's request; we shall be entitled to choose which of the security interests to release.
- 6.2 The Customer is prohibited from pledging or transferring reserved goods by way of security. The processing and resale of reserved goods shall only be permitted in the normal course of business as referred to in the following points.
- 6.3 In the event of resale of reserved goods, the Customer hereby assigns to us by way of security the arising claims against the purchaser – where appropriate, in proportion to the co-ownership share. This applies irrespective of whether the reserved goods are resold with or without further processing. This also applies for any other claims which take the place of the reserved goods or result from the retained goods, for example insurance claims or claims for unauthorised action resulting in loss or destruction of secured goods. We accept the assignment. The customer is hereby irrevocably entitled to collect the claims assigned to the seller on its own behalf. We may only revoke this authorisation for collection in the event of enforcement or if a good cause exists, in particular in the event of default or suspension of payment, if an application is made to initiate insolvency proceedings or if there are comparable indications which suggest that the Customer is insolvent.
- 6.4 If reserved goods are combined or associated with other goods, we shall acquire co-ownership of the combined or associated goods. The co-ownership share shall correspond to the value of the reserved goods. If reserved goods are combined to become components of new items, and the new item is regarded as the main item, we shall acquire co-ownership of the new item in proportion to the invoice value of the item delivered by us, or the current value of the main item in the absence of an invoice value. The Customer shall store the new item free of charge, with the due care and diligence of a prudent businessperson. If the Customer processes our goods according to section 950 of the German Civil Code, we shall be deemed to be the manufacturer in accordance with the regulations. However, if the Customer acquires ownership of the produced item according to section 950 of the German Civil Code, it is agreed that the ownership of the produced items shall be transferred to us. If full acquisition of rights is not possible for us, it is agreed that co-ownership of the produced items, to the invoice value of the delivered items, or the current value of the new items in the absence of an invoice value, shall be transferred to us. The Customer shall store the new item free of charge, with the due care and diligence of a prudent businessperson.
- 6.5 The Customer should inform us without delay in written or text form if application is made to initiate insolvency proceedings or in the event of seizures or any other interventions by third parties, so that we can assert our legal rights, in particular take legal action in accordance with section 771 of the Code of Civil Procedure (ZPO). If the third party is unable to reimburse the judicial and extra-judicial litigation costs in accordance with section 771 of the Code of Civil Procedure, the Customer shall be liable for the loss incurred by us.
- 6.6 If the Customer is in breach of contract, in addition to taking back the goods, we shall also be entitled to withdraw from the contract after giving the Customer an appropriate period of time to perform the service, particularly in the event of non-payment of the due purchase price; statutory provisions relating to the dispensability of a deadline shall remain unaffected. The Customer shall be obliged to surrender the goods. Taking back the goods and/or claiming retention of title, or the seizure of the reserved goods by us does not represent a withdrawal from contract, unless this is expressly stated by us. We shall be entitled to inspect our goods at any time. The Customer shall grant us access to their premises. This also applies to goods for which we only have co-ownership rights.

## **7. Defect Liability, Conditions for Inspection and Complaint Notification**

- 7.1 Deliveries must be inspected without delay on arrival. Obvious defects must be reported immediately in written or text form. Defects which are identified after thorough examination must be reported in written or text form, within five working days after delivery. Other defects must be reported in written or text form immediately on their discovery or as soon as the Customer becomes aware of the defect during normal usage of the delivered items without closer examination. The time limit will have been met if punctual notification is received by us. If the Customer intends to process or install the delivery further, the Customer is obliged to examine the delivery for defects prior to processing and – if reasonable – to first test the contractual function of the delivered goods using a prototype. We shall not be liable for any costs which could have been avoided through appropriate testing, in particular for installation and removal costs.
- 7.2 The customer shall not refuse to accept deliveries because of minor defects.

- 7.3 If the Customer fails to carry out a proper examination and/or provide notification of defects as per point 7.1, liability on our part shall be excluded for any incorrect or untimely reported defects, in accordance with statutory regulations. Defect liability rights shall also not apply if the Customer modifies a delivery item, or allows it to be modified by a third party without our consent or does not make required samples available to us for examination, making corrective action impossible or unreasonably difficult. The Customer shall bear all additional costs which are incurred to take corrective action as a result of the modifications. This also applies for operating errors.
- 7.4 In the case of material defects, we are obliged and entitled to initially rectify the defects or make a replacement delivery, at our own discretion. Our right to refuse supplementary performance in accordance with statutory requirements remains unaffected. At our request, the rejected delivery item shall be returned to us, carriage paid, stating the delivery note number. In the case of legitimate or unjustified complaint, where the defect was not discernible to the Customer, we will bear the necessary costs for examination and rectification, in particular labour and material costs. Otherwise we may demand compensation from the Customer for the costs incurred by the unjustified request for rectification (in particular testing and transportation costs), unless the missing defect was not discernible to the buyer. Supplementary performance does not include removal of the defective goods or reinstallation if we were not originally obliged to carry out the installation. In the event of failure, i.e. repair or replacement supply is impossible or unreasonable or in case of refusal or inappropriate delay, the Customer may withdraw from the contract or reduce the purchase price appropriately.
- 7.5 Unless otherwise agreed, we are only obliged make deliveries free of third-party industrial property rights or copyrights in the country of the place of delivery. In the case of defects of title, we will either alter or exchange the item supplied, at our own expense and discretion, in such a way that it no longer infringes any third party rights, but so that the item supplied continues to fulfill its contractually agreed function, or we shall procure the right of use for the Customer by concluding a licensing agreement. If we are unable to do this within a reasonable time, the Customer is entitled to withdraw from the contract or to reduce the purchasing price appropriately. Each contracting partner shall immediately inform the other, either in written or text form, if claims are made against them for violation of industrial property rights or third party copyrights.
- 7.6 We shall be entitled to make the required supplementary performance conditional upon the Customer paying the due purchasing price. The Customer is however entitled to retain a portion of the purchasing price, which is appropriate in relation to the defect.
- 7.7 We shall not be liable for documents, drawings, teaching materials, samples, materials, preliminary products or similar specifications provided by the Customer or supplied by us at the express instruction of the Customer. The Customer is responsible for his specifications and provided materials, in particular that property rights of third parties are not infringed. We are not obliged to perform technical or legal examination of specifications or provided materials. The Customer indemnifies us of all claims made against us for damages invoked by third parties because of the specifications and materials provided by the Customer, as well as all necessary defense costs.
- 7.8 In cases of defects of quality and title in components from other manufacturers, which we cannot rectify for licensing or practical reasons, we will assert our own claims at our discretion against the manufacturer and supplier on the Customer's account or transfer the title to this to the Customer. Claims lodged against us due to such defects only exist under other conditions and according to these sales conditions if the legal enforcement of the above-mentioned claims against the other manufacturer or supplier was unsuccessful or is futile (for example in cases of insolvency). The limitation period of the Customer's specific warranty claims against us is suspended for the duration of the legal dispute.
- 7.9 The Customer's statutory claims for damages or reimbursement for needless expenditure shall comply with point 9, even in the case of defects, and shall otherwise be excluded.
- 7.10 Special legal provisions for the final delivery of goods to the consumer remain unaffected (supplier regress in accordance with sections 478 and 479 of the German Civil Code).

## **8. Implementation Restriction**

Fulfillment of the contract is subject to the proviso that it does not contravene German, US American, other applicable national, European or international rules of foreign trade legislation, and that it does not violate any embargos or other sanctions. The Customer is obliged to make all necessary transport and export information and documentation available.

## **9. Liability for Compensation Due to Fault**

- 9.1 Our liability for compensation, for whatever legal reason, in particular due to impossibility, delay, defective or incorrect deliveries, breach of contract, infringement of duties during contract negotiation and unlawful acts, to the extent that it involves culpability, is limited according to point 9:
- 9.2 We shall not be liable in the case of minor negligence by our institutions, legal representatives, employees or other auxiliary persons, provided that it is not in breach of essential contractual obligations. Essential contractual obligations are those which facilitate the proper implementation of the contract, the customer can regularly rely on their compliance and their culpable neglect can endanger the purpose of the contract.

- 9.3 In so far as we are liable for damages according to point 9.2, the liability shall be limited to damages anticipated when entering into the contract as possible consequences of a contractual breach or – taking into consideration the circumstances which were known to us or should have been known to us – should have been foreseen when applying due care and attention. Furthermore, indirect and consequential damage resulting from defects in the delivered goods are only liable for compensation if such damage can be typically expected and when the delivered object is used in conformity with its intended purpose.
- 9.4 We shall only be liable for damages arising from defects in deliveries from suppliers if these are caused through breach of obligation according to point 2.4. We shall not be liable for damages which would have been avoided through proper inspection.
- 9.5 The above exclusions and limitations of liability shall apply to the same extent for our institutions, legal representatives, employees or other auxiliary persons.
- 9.6 In so far as we provide technical information or work in an advisory capacity and this information or advice is not part of our contractual duties, this shall be provided at no expense and under exclusion of all liability.
- 9.7 The above restrictions shall not apply in cases of gross negligence or willful behaviour by us, our legal representatives or auxiliary persons, including failure to disclose a defect, for guaranteed characteristics, injury to life body or health or according to the German Product Liability Act.

## **10. Cancellation and Withdrawal**

- 10.1 The Customer can only cancel or withdraw from the contract due to a breach of duty – which is not a defect – if we are responsible for the breach of duty. A free right of cancellation for the Customer is excluded (in particular in accordance with sections 651 and 649 of the German Civil Code). Otherwise the statutory requirements and legal consequences shall apply.
- 10.2 In addition to the statutory and extended contractual regulations according to these sales conditions, we can withdraw from the contract with sufficient reason or partially withdraw in the case of partially completed services. Good cause shall be deemed to exist, in particular in the case of a significant worsening of the economic circumstances of the Customer, or if it threatens to be the case, as a result of which the fulfilment of the Customer's obligations to us is jeopardised, if the Customer files for insolvency or if insolvency proceedings are opened. In such cases, we shall be entitled to demand the agreed payment, less any expenses saved, and the utilisation of the services already rendered.

## **11. Limitation**

- 11.1 Notwithstanding section 438 paragraph 1 no. 3 of the German Civil Code, the general statute of limitations for claims from defects of quality and title is one year from delivery. If an acceptance procedure has been agreed, the limitation period shall commence with the acceptance.
- 11.2 Special statutory conditions for the limitation period (in particular section 438 paragraph 1 no. 1 and 2 and paragraph 3, sections 444 and 479 of the German Civil Code) remain unaffected.
- 11.3 The above-mentioned limitation period for purchasing rights also apply for contractual and non-contractual claims for damages by the Customer which are based on a defect in the goods, unless application of the ordinary statutory limitation in a particular case (according to sections 195 and 199 of the German Civil Code) results in a shorter period of limitation.
- 11.4 Claims for damages by the Customer due to deliberate or grossly negligent acts by us, our legal representatives or auxiliary persons, or due to damages arising from injury to life, body and health, as well as any liability under the German Product Liability Act, become time-barred exclusively according to the statutory period of limitation provisions.

## **12. Binding Nature of the Contract, Choice of Law, Place of Performance and Place of Jurisdiction**

- 12.1 In the event that individual provisions of the agreement are legally invalid, the remaining provisions shall remain in force. This shall not apply if adherence to the contract constitutes unreasonable hardship for one party.
- 12.2 This contract, as well as all legal relationships in connection with this contract – insofar as is permitted by law – are subject exclusively to German law, with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and conflict of laws provisions.
- 12.3 Unless otherwise agreed, the place of performance for delivery obligations and subsequent fulfilment shall be Erlangen. If we are also responsible for installation, the place of performance shall be the location in which the installation takes place.
- 12.4 If the Customer is a businessperson, legal entity under public law or a special fund under public law, the place of jurisdiction shall be Erlangen; however, we shall also be entitled to take legal action against the Customer at the court which has jurisdiction at the Customer's place of business.