

# General Terms and Conditions of Business of PM Fittings GmbH (Terms and Conditions)

08/1988

## 1 Scope of validity

- 1.1 All our delivery transactions are based on these Terms and Conditions. Deviating agreements, especially conflicting terms and conditions of business of our customers, require our express written consent.

## 2 Offers

- 2.1 Our offers are always subject to change. Delivery contracts with us only come about or only become binding for us if we have accepted received orders in writing, confirmed received declarations of acceptance in writing or delivered the items ordered by the customer. Additions or changes to contracts must be identified as such in order to be valid and also confirmed by us in writing. No rights may be asserted against us deriving from verbal or telephone pledges, reports, consultations, etc. – irrespective of whether they were given before or after conclusion of the contract.
- 2.2 Details or characteristics specified in drawings and any other documents are only deemed binding and assured if this has been expressly agreed in writing. Otherwise, we supply standard goods; in this respect the approved tolerances of the specified standards apply. Samples are type samples intended to show the approximate characteristics of the goods.
- 2.3 We reserve the rights of title and copyrights to our drawings, etc. On request, they must be returned to us immediately. They may not be used for any other purpose, in particular not duplicated or made accessible to third parties in any form, without our consent.
- 2.4 All prices are in euro ex works or ex warehouse excluding transport, packaging and statutory VAT. In the event that we conclude contracts in foreign currency, the exchange rate applicable on the day the contract is concluded (subsection 2.1) is binding. We are entitled to make corresponding price adjustments if the exchange rate changes by more than 2.5%. Should cost increases occur during the period from conclusion to execution of the contract, we are also entitled to demand a correspondingly adjusted price.
- 2.5 Any accruing packaging, transport, insurance, start-up and other costs will be charged separately at cost; this also applies to the statutory VAT. It is at our discretion to decide what type of packaging to use. We do not take back packaging.

## 3 Payments

- 3.1 All payments shall be made directly to us or to the paying agent designated by us immediately after invoice receipt, but no later than 30 days from the date of the respective invoice, without any deduction and at no cost to the receiver. Payments to employees and representatives of our company only have a discharging effect if the person concerned has been granted authority to collect payments by us.
- 3.2 We only accept bills of exchange and cheques by prior agreement; moreover bills of exchange are only accepted subject to their discountability. All discount charges and any other incidental costs shall be borne by the customer and must be refunded to us immediately. Amounts of bills of exchange or cheques will only be credited if their counter value is available to us irrevocably and without reservation.
- 3.3 From exceeding of dates due, we shall be entitled, without prior reminder, to interest in the amount of 6 percentage points above the current discount rate of the German Bundesbank, plus possible commission and costs, from the respective due date.
- 3.4 If the customer does not accept the merchandise, we are entitled, after setting a grace period of 10 days, to withdraw from the contract or to demand compensation for non-performance. In the latter case, we are entitled to either demand 10% of the purchase price, without proof of damage, or compensation of the actual loss incurred. Instead of asserting these rights we can also supply equivalent items on the agreed terms and conditions within a delivery deadline that we have extended appropriately.

- 3.5 If we believe after conclusion of the contract that the customer's ability to pay or creditworthiness is in doubt (e.g. also due to payment arrears or default) or should these doubts only then become known, we are entitled, at our discretion, to either demand payment in cash or the furnishing of security prior to delivery or to withdraw from the contract and demand the refund of our expenses from the customer.
- 3.6 Customers are not entitled to transfer rights from contracts concluded with us to third parties, assert rights of retention with respect to our claims and/or declare offset without our consent.

#### **4 Deliveries**

- 4.1 The delivery dates specified by us shall commence on the date of our written declaration of acceptance or confirmation, but not before the submission of the documents to be procured by the customer, e.g. drawings or samples, creation of the necessary conditions and receipt of any agreed down payments. All information concerning delivery times and periods is only approximate and non-binding unless expressly agreed otherwise. Any amendments or additions to the contract will lead to a corresponding extension of the expected delivery time. In the event of any overrun of deadlines customers are only entitled to set us an appropriate period of grace by registered letter and, should this expire to no avail, to withdraw from the contract. In the event of withdrawal we are however entitled to immediate payment of all (partial) deliveries and/or (partial) performances carried out by us or by our supplier up until receipt of the declaration of withdrawal. A right to withdrawal does not exist if we were unable to comply with the subsequent deadline for delivery for reasons beyond our control. In this case, the customer may only withdraw from the contract three months after exceeding the original delivery date.
- 4.2 Damage compensation claims for delayed deliveries or non-delivery are excluded in each case.
- 4.3 The place of performance for both parties for all obligations arising from the delivery transaction is Achim-Uesen. In all cases the risk shall pass to the customer upon notification of readiness for shipment, but, at the latest, once the goods are dispatched to the customer. Consequently, transport always takes place for the account and at the risk of the customer.
- 4.4 Partial deliveries and performances are permitted and must be inspected immediately by the customer; any defects must be notified without delay pursuant to subsection 6.

#### **5 Retention of title**

- 5.1 We reserve the title to the supplied goods (reserved goods) until the complete payment of all the claims owing to us from this contract and from the business relationship with the customer and which may arise in future, irrespective of the legal basis.
- 5.2 The customer is entitled to resell, process, blend or combine and subsequently sell within the scope of an extended reservation of ownership provided and in so far as this takes place in the ordinary course of business. In particular, pledging or assignment as security of the reserved goods by the customer is not permitted. The customer may only transfer title to the reserved goods to its buyers after our claims have been settled in full. We reserve the right to revoke these sale, processing and other authorisations in the event that the customer fails to fulfil his payment obligations or fails to do so in good time or other good cause exists.
- 5.3 Acquisition of ownership by the customer of the reserved goods in the event of their processing is excluded. The customer shall carry out any processing or transformation for us. In the event that the goods are processed with other items not belonging to us by the customer, we shall acquire joint title to the new item in proportion to the invoice value of the reserved goods compared with the value of the new item after processing has taken place. Otherwise, the same shall apply for the new goods created from the processing as for the goods subject to retention of title; they are also deemed reserved goods within the meaning of these terms and conditions.

- 5.4 The customer shall hereby already assign to us as security all the claims, including ancillary rights, to which he is entitled from the resale and the business relationship with his buyers in connection with the sale, regardless of whether the reserved goods are resold with or without processing, etc. and whether they are resold to one or more buyers. In the event that the reserved goods are sold by the customer together with other goods not belonging to us, be it without or after processing, the claims shall be assigned to us in a ratio that corresponds to the proportional value of our ownership or co-ownership of the reserved goods existing at the time of the sale compared with the other goods and the co-ownership rights of others to the newly created item.
- 5.5 The customer is entitled and obliged to collect the claims arising from the resales despite the assignment as long as we have not revoked this authorisation. He shall however immediately forward to us the amounts collected from the third-party buyer in the amount of the claims owing to us. Our collection right shall remain unaffected by the collection authorisation of the customer. We shall however not collect the claims ourselves as long as the customer duly meets his payment obligations and there is no other good cause. The customer's collection authorisation shall expire, even without our express revocation, as soon as he ceases his payments. At our request the customer shall notify us of the debtors of the assigned claims, inform the debtors of the assignment and surrender to us all the other information and documents we require.
- 5.6 If the customer defaults on his payment obligation, we believe his ability to pay and creditworthiness is in doubt or he breaches one of the duties arising from the agreed retention of title, the total residual debt shall be due for payment immediately. In these cases we are entitled to demand the surrender of the reserved goods and collect them from the customer; the customer no longer has a right of possession. The request for surrender itself does not constitute withdrawal from the contract unless we expressly declare this withdrawal in writing.
- 5.7 The customer shall inform us without delay of any impairment of our rights to the reserved goods.
- 5.8 At the request of the customer, we are obliged to transfer to the customer our ownership of the reserved goods and the claims assigned to us, to the extent that their value exceeds by more than 20% the total value of the claims owed to us by the customer.

## **6 Warranty**

- 6.1 We shall only grant a warranty for third-party products sold by us and supplies and services to the extent that the supplier is obligated to us in this respect and honours this undertaking. We are entitled to assign any claims against our suppliers to our customers with discharging effect.
- 6.2 We exclusively grant a warranty for obvious and concealed defects and for the absence of assured characteristics of products we have manufactured ourselves within 6 months after the date of arrival of the goods at the prescribed destination to the effect that, at our discretion, we either repair the goods at the works or at our warehouse free of charge or supply a defect-free replacement ex works or ex our warehouse. The customer is only entitled to rescission of the contract after prior written notice of his intention to reject the goods if substitute delivery or repair is not possible in the individual case, or is not effected or fails despite a written request specifying an appropriate period of grace. Other claims of the customer due to defects or the absence of assured characteristics are excluded.
- 6.3 Any defects must be brought to our notice in writing and without delay, however, no later than 8 days after receipt of the goods at the prescribed destination and, in case of concealed defects, within 8 days after the defect has been detected, but at the latest within the time period specified in subsection 6.2. If the customer fails to observe this time limit, he cannot make any more claims under the warranty.
- 6.4 We are not obligated to rectify the fault or supply replacement goods as long as the customer fails to meet his contractual obligations.

6.5 The warranty obligation shall expire if the supplied goods are modified, improperly handled, worked on or processed.

6.6 Used goods are not covered by the warranty.

## **7 Compensation**

All claims for compensation directed against us are excluded, in so far as is permitted by law, notwithstanding the legal grounds from which such claims are derived. Otherwise, the extent of the liability is limited in each individual case to the offer or invoice amount that forms the basis for the respective delivery.

## **8 Industrial property rights**

Liability is not accepted for goods supplied or services rendered by us due to any existing patents or third-party industrial property rights and their infringement. It is exclusively up to the customer to check such rights.

## **9 Place of jurisdiction**

9.1 The place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship, also from documents, bills of exchange or checks, is Achim-Uesen. Instead we may at our discretion also institute legal proceedings in Bremen or at the registered office of our contractual partner or before another competent court. Any other legal venue is excluded.

9.2 German law applies. The application of a standard law governing the international purchase of movable items is excluded.

## **10 Severability clause**

If individual provisions of these terms and conditions or the respective delivery contracts are or become invalid, the validity of the remaining provisions shall not be affected thereby. The same applies in the event of an omission.