

# GENERAL CONDITIONS OF SALE AND DELIVERY OF PSG GERMANY GMBH, DUISBURG

## 1. General, Conclusion of Contract

- 1.1 These General Conditions shall only apply to  
- persons, who act in practice of their commercial or self-employed business (entrepreneur),  
- legal entities of public law or a public-legal fund,  
and are effective to all present and future deliveries and services of PSG Germany GmbH in connection with contracts of sale, work contracts and contracts for work and materials. Any General Conditions of the Purchaser are hereby rejected in full and shall not commit us even if not again opposed after receipt.
- 1.2 Our offers shall be subject to alteration. Contract conclusions and all other agreements, including verbal agreements and promises by our employees or representatives shall only become legally binding after having been confirmed in writing via mail, fax or e-mail by PSG Germany GmbH.
- 1.3 Given drawings, sketches, technical data, weight data, measurements and performance descriptions shall, insofar as they are not expressly stated to be binding in our confirmation, only be regarded as approximate information. We retain the ownership and the intellectual property rights in such documents; they must not be disclosed to any third party.
- 1.4 Dimensions and construction measures mentioned in our offers or documentations correspond to the valid standards in the days of the publishing of the offer or documentation. The adjustment to a later possibly deviate standard is reserved.
- 1.5 The Purchaser takes the sole responsibility for his own documents placed at our disposal, such as drawings, gages, samples or similar. The Purchaser is responsible for his presented execution drawings, that these drawings do not violate protecting rights of a third party. We are not obliged to inspect, whether due to the execution drawings of the Purchaser our offer, the fulfillment of the order or other reasons may violate any protecting rights of a third party. Is there an utilization of a third party nevertheless, the Purchaser has to exempt us.
- 1.6 Unless otherwise agreed, the respectively latest edition of Incoterms established by the International Chamber of Commerce shall govern the interpretation of the customary delivery conditions (e.g. EXW).

## 2. Prices

Unless otherwise agreed, our prices are free ex-works and/or customs warehouse including loading. Any additional costs, for example incurred by packing, freight, import duty, assembly, insurance premiums and value added tax (VAT) shall be borne by the Purchaser.

## 3. Terms of Payment

- 3.1 Unless otherwise expressly agreed upon, our invoices have to be paid by the Purchaser within 20 days after the date of the invoice.
- 3.2 If payment is delayed, the Purchaser shall be liable to pay interest from the due date of payment in accordance with the prevailing bank interest rates, but at least an interest rate of 8 % above the respective discount rate of the European Central Bank. The right to claim further damages shall be reserved. § 353 HGB shall not be affected.
- 3.3 In the event of circumstances arising subsequent to entering into the contract, which materially adversely affect the financial situation of the Purchaser and endangering the realization of our contractual claims against the Purchaser, PSG Germany GmbH shall be entitled to retain our deliveries or services even where it is under an obligation to perform first unless the Purchaser has already performed his obligations or security is given to us. If the Purchaser does not comply with the request for simultaneous performance or giving security, then we may withdraw from the contract. Our right to enforce reservation of title according to clause 6.7 shall not be affected.
- 3.4 The Purchaser shall only be entitled to a right of retention insofar as the claims in question are based on the same contractual relationship. The Purchaser shall only be entitled to off-set his payment with such counterclaims that are undisputed or have been confirmed by a final and unappealable statutory judgement.

## 4. Performances, Periods of Delivery and Dates

- 4.1 Periods and dates of delivery are approximate only, unless we have expressly confirmed them in writing as binding. Any period of delivery shall commence upon the date of our order confirmation, but, however, not before all technical and commercial details have been clarified and all necessary licenses have been granted. Any alterations in deliveries requested by the Purchaser within the delivery period shall extend the delivery period accordingly.
- 4.2 We are entitled to make partial deliveries.
- 4.3 Unforeseeable events entitle us to defer delivery for so long as the impediment persists plus an appropriate additional period. Unforeseeable events are such circumstances as we could not have avoided by reasonable care in the circumstances of the particular case, such as war, currency and economic or other sovereign measures, civil disturbance, natural events, fire, strikes, log-outs, non-supply of raw materials arising through no fault of us, traffic obstructions, interruption of operations and any other events of force majeure, through which the performance of the contract is endangered, made substantially more difficult or rendered impossible. In cases of substantial obstacles or impossibility PSG Germany GmbH shall also be entitled to withdraw from the contract without any obligation to pay damages. The Purchaser may demand a statement from us as to whether we are withdrawing from the contract or delivering within an appropriate period. If we do not give such a statement, then the Purchaser may withdraw from the contract. The Purchaser shall not refuse partial deliveries and partial performance, unless he has a legitimate interest in rejecting them.
- 4.4 If delivery is delayed, then the Purchaser shall grant us an appropriate extension of time in writing. If such extension of time expires without the goods being dispatched by us, the Purchaser shall be entitled to cancel those supplies, which have not been dispatched by us prior to the expiration of such extension. If the Purchaser suffers damage due to a delay attributable to our fault, PSG Germany GmbH shall reimburse the proven damage, but only up to an amount of 5 % of the value of the delayed or non-delivered goods or services. Such limitation does not apply in respect of that liability for willful actions or gross negligence. The Purchaser's right to withdraw from the Contract after the fruitless expiration of the granted time extension shall not be affected.

## 5. Dispatch and Passing of Risk

- 5.1 Packing will be done such as usual in the trade and at the Purchaser's expense.
- 5.2 The goods will be transported at the expense of the Purchaser and at his risk. The risk shall pass to the Purchaser upon transfer of the goods to a forwarder or carrier and in any event not later than on leaving our warehouse or works, even if free delivery to the place of destination is agreed. In the event that the dispatch is delayed by reason of the Purchaser's conduct then the risk shall pass to the Purchaser immediately upon notice of readiness for dispatch being given.
- 5.3 Goods in respect of which notice of readiness of dispatch has been given, must be collected without delay. If not, PSG Germany GmbH shall be entitled at its option to dispatch such goods or to store them at the expense and risk of the Purchaser and to invoice them immediately.
- 5.4 Transport insurance will only be effected for the Purchaser if expressly agreed upon in writing and at the Purchaser's expense, even where free delivery to the place of destination is agreed.

## 6. Reservation of Title

- 6.1 All goods supplied remain our property (reserved goods) until settlement of all our claims referring to the whole business connection, whatever their legal basis is, even if payments have been made in respect of specially designated claims. Where there is a current account with the Purchaser, any property to which we have reserved title shall be security for the balance outstanding on account. The same refers to other contingent liabilities, which we enter into for the Purchaser.
- 6.2 Processing or manufacturing of the goods to which PSG Germany GmbH retains title shall be carried out for us as manufacturer as provided in § 950 BGB (German Code of Civil Law), without committing us. The manufactured goods shall be considered as the goods, to which we have retained title according to clause 6.1 above and the Purchaser has to store these goods for us free of charge.

- 6.3 If goods to which PSG Germany GmbH retains title are mixed or combined by the Purchaser with other goods so that our property is superseded, then PSG Germany GmbH shall be entitled to a share in the ownership of the new product in the proportion, which the invoiced value of the goods to which we have retained title bears to the total invoiced value of all other goods used. The Purchaser has to store these goods for us free of charge. Such goods arisen out of the processing or combining with other goods shall be considered as our property according to clause 6.1 above.

- 6.4 The Purchaser is permitted to sell goods, to which we retain title, but only in the normal course of business and on his normal terms, unless he is late in payment and provided that his claims including any ancillary rights arising from resale are assigned to us in accordance with the following conditions. The Purchaser is not entitled to dispose in any other manner of goods to which we retain title. It shall also be regarded as a sale, if the Purchaser uses the goods to which we retain title for performing work contracts and contracts for work and materials.

- 6.5 The Purchaser's claims pertaining to the goods and arising from the resale or a different legal ground (insurance, tortuous act) of the goods, to which we retain title are already now completely assigned to PSG Germany GmbH. These claims shall be deemed to serve as security to the same extent as does the reserved good pursuant to clause 6.1 above.

- 6.6 In case the reserved good is sold by the Purchaser together with other merchandise, the claim accruing from such resale shall be assigned to us in the amount of the invoice value of the reserved good. In case of goods resold in which we have rights of co-ownership as specified under clause 6.3, a portion of this claim corresponding to our share of co-ownership is to be assigned to us.

- 6.7 The Purchaser shall be entitled to collect the money based on resale, unless we revoke such permission; we are allowed to revoke such permission in case of delayed payment by the Purchaser and/or in case of a material deterioration of his financial situation. Upon our request, the Purchaser shall be committed to inform his customers immediately about the assignment to us – unless this information has been given by ourselves – and to provide us with the information and documents being necessary for collecting the claims from the customers. In case of delayed payment or a material deterioration in the financial situation of the Purchaser we are further entitled to demand the return of the reserved goods or the transfer of the indirect possession thereof at the Purchaser's expense; in such cases we shall also be entitled, after giving notice, to enter the Purchaser's business facilities and to take possession of the reserved goods. Such steps are only to be considered as withdrawal from the contract, if so expressly declared in writing.

- 6.8 The Purchaser shall immediately inform us about an attachment or other impairments of the goods by third parties to which we have retained title.

- 6.9 PSG Germany GmbH shall release securities upon its choice on the Purchaser's request, if the value of the given securities exceeds by 20 % our claims.

## 7. Notification of Defects and Rights of the Purchaser for Defects

- 7.1 The Purchaser shall check the goods immediately upon receipt with due and reasonable care. Notification of defects in respect of recognizable defects must be given in any event not later than two weeks after receipt in writing and in respect of non-evident defects within two weeks after identification.

- 7.2 If the manufacturing and delivery are based on Purchaser's construction respective Purchaser's statements or drawings we do not take responsibility for the suitability to the assigned purpose; in these cases our responsibility covers only the manufacturing according to the drawings.

- 7.3 We are not responsible for failures, which are arisen due to the following reasons: Misuse, overload, faulty installation or start-up by the Purchaser or a third party, natural wear, faulty or careless handling, substitution of non-PSG-Germany parts, unfit operating supplies, chemical, electric-chemical or electrical influence, unless in our responsibility.

- 7.4 All claims of the Purchaser are cancelled, if serial-number, type or similar signs are removed or unrecognizable, because in these cases the internal check of the reason for the defect is impossible and we are not able to recourse claims to suppliers of PSG Germany GmbH.

- 7.5 We will replace or rework any defective goods, for which we have received a justified and immediate notification of defects; alternatively, we shall also be entitled, adequately considering the Purchaser's interests, to pay compensation for the inferior quality of the goods.

- 7.6 If we do not comply with our obligation according to clause 7.5 or does not fulfill such obligation in accordance with the Contract or the replacement fails, the Purchaser may demand a price reduction or withdraw from the Contract.

- 7.7 Our liability for defects of accessories or components of equipment sold by PSG Germany GmbH is limited first to the assignment our claims against the manufacturer. We will provide the Purchaser about all necessary information he needs for the non-judicial utilization. If the utilization fails, our liability according to clause 7.5 will take place.

- 7.8 All further or different claims are excluded. This also applies for claims of compensation of damages, which are not arisen at the delivery object (consequential damages). If a warranty, which is explicit confirmed in our acknowledgement of order and described like this, is breached, claims for damages can only be raised, if it was intended to protect the Purchaser by the guaranteed quality precisely that kind of damage that occurred.

- 7.9 The rights of the Purchaser for defects are time-barred in the legal term. If the purchased product is used, any liability for defects shall be excluded; this does not apply in cases of crafty concealment or breach of a warranty.

## 8. General Limitation of Liability

- 8.1 Our liability exclusively follows this General Conditions of Sale. All claims, which are not explicit granted in this Conditions, especially claims for damages out of impossibility, delay, breach of contractual extra obligations (including advice and given information), breach of duty prior to contract, unallowed acting – also so far these claims are connected with claims for defects of the Purchaser – are excluded, unless they are based on an event of willful intent or gross negligence by us, a legal representative or agent of us, or unless they are based on a light negligent breach of essential contractual duties by us, a legal representative or leading agent of us, or it is a guilty breach of life, body and health.
- 8.2 Reserving the rights of clause 7.9 all claims against us, whatever their legal basis maybe, shall be time-barred after one year, unless there is a willful or crafty behavior by us; in these cases the legal statutory limitation periods are effective.
- 8.3 The above provision shall not apply to claims for personal injury or damage to privately used objects under product liability law.

## 9. Place of Performance and Jurisdiction, Law applicable

- 9.1 The place of performance for our deliveries shall be our company headquarter.
- 9.2 The place of jurisdiction between us and the Purchaser is Duisburg. PSG Germany GmbH shall also be entitled, however, to bring actions against the Purchaser at his own place of residence. The place of jurisdiction Duisburg shall apply, if the Purchaser has no domestic place of jurisdiction, or changes his domestic residence or usual whereabouts after entering into the contract or his residence or usual whereabouts are unknown at the time of filing of a suit.
- 9.3 The law of the Federal Republic of Germany as applicable between domestic parties shall govern all legal relationships between PSG Germany GmbH and the Purchaser.

## 10. Data Protection and Personal Data

- The customer is advised that PSG Germany GmbH stores and processes personal data to the extent as it is necessary in the context of the contractual relationship. Personal data will only be passed on to third parties if there is a legal obligation for this. The customer has the right to receive information about his processed data upon request.

## 11. Export

- The customer is obliged to comply with all rules, laws and regulations regarding the export of goods and export control, which are valid in the European Union and the United States of America.

- 11.1 The goods purchased from PSG Germany GmbH may not be exported, sold or consumed by the customer in violation of applicable laws or regulations of the European Union and the United States of America. This also includes: (a) "US Export Administration Act" and the associated regulations, (b) "U.S. International Traffic in Arms Regulations (ITAR)"; (c) the provisions of the Chemical Weapons Convention (CWC); (d) Sanctions and embargoed countries.
- 11.2 The customer is responsible for obtaining all licenses and permits that are required for the import of the products in accordance with the laws and regulations applicable in the country of destination. Furthermore, the customer is explicitly advised that approval from the German Federal Government and / or the United States of America may be required to export or ship the goods to a third country. It is the sole responsibility of the customer to obtain information about the location of the end user and to inform the supplier if further export permits or an end use certificate must be presented.
- 11.3 The customer must not sell or ship the goods to third parties who are on a European or US ban list (governments, institutions, organizations or natural persons). The products purchased from PSG Germany GmbH may not be used directly or indirectly in dangerous nuclear applications, nor in the design, development, manufacture, storage or use of chemical weapons, biological weapons or rockets. The client is obliged to inform PSG Germany GmbH of such an intention.

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## 12. Ethical Corporate Principles

PSG Germany GmbH requires its business partners to have commercial practice and manufacturing processes that comply with all applicable laws and regulations.

The supplier and the customer commit themselves not to participate in activities that may conflict with the applicable law or their respective regulations for ethical business practices, be it with regard to the two parties themselves, their employees and representatives or other intermediaries.

With regard to the sale or resale of the goods of the supplier, the customer agrees that he may not make any payments or transfers of value to third parties (not even through one or more intermediaries) that transform the customer, the supplier or companies affiliated with the customer into one situation that contradicts the American Foreign Corrupt Practices Act or another applicable anti-corruption law. In the event of non-compliance with the provisions set out in this paragraph, the customer is obliged to keep the supplier and its affiliated companies free of damage and to release them from any liability to sell or ship the goods to third parties who are on a European or US ban list (governments, institutions, organizations or natural persons). The products purchased from PSG Germany GmbH may not be used directly or indirectly in dangerous nuclear applications, nor in the design, development, manufacture, storage or use of chemical weapons, biological weapons or rockets. The client is obliged to inform PSG Germany GmbH of such an intention.

## 13. Final Clause

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Should individual provisions of these General Terms and Conditions become ineffective or unenforceable, the effectiveness of the business conditions will not be affected as a whole.

Reviewed: April 2020