

TERMS AND CONDITIONS OF SALE AND DELIVERY

of

Pengg Austria GmbH,
A – 8621 Thörl/Styria, Firmenbuch Nr. FN 294503 v

1. General:

Business transactions of Pengg Austria GmbH ("PENGG" or the "Seller") shall exclusively be entered into subject to the following Terms and Conditions of Sale and Delivery. These Terms and Conditions of Sale and Delivery shall be binding for any present and future business transactions with any counter-party (the "Buyer"), also if a specific transaction does not make specific reference to these Terms and Conditions of Sale and Delivery.

Terms and Conditions of Sale and Delivery Any terms and conditions which deviate or supplement these Terms and Conditions of Sale and Delivery, in particular terms and conditions of a Buyer, printed or unprinted and in any form whatsoever, shall only be valid if expressly confirmed in writing by PENGG.

The provisions relating to deliveries of goods shall apply by analogy also to the provision of services.

Any deviation from these Terms and Conditions of Sale and Delivery shall be effective only if they are expressly confirmed by PENGG in writing. This shall also apply to any waiver of written form requirements.

These Terms and Conditions of Sale and Delivery shall be applicable also if PENGG, being aware of any conflicting or deviating conditions of the Buyer, makes delivery to the Buyer without reservation.

2. Offer, order:

PENGG'S offers shall be without engagement and not qualify as binding within the meaning of sections 862 et seq, of the Austrian General Civil Code. The prices and other information provided in an offer shall be non-binding and only indicative.

If PENGG provides documents such as illustrations, drawings, indications of weight and measurements along with the offer, these shall only be indicative, unless they are expressly referred to as binding, and PENGG reserves the right to make minor modifications. PENGG will reserve all property rights and copyrights to illustrations, drawings, calculations and other documents. This shall also extend to written documents which are designated "confidential".

Any offer or project document may only be replicated or made available to third parties subject to the prior written consent of the Seller. PENGG shall be entitled to request that such documents be returned if no binding order is agreed.

PENGG and the Buyer shall be deemed to have concluded a contract if PENGG, after receipt of the Buyer's order and customer-specific specifications, if any, sent to the Buyer a related written order confirmation or dispatched delivery to the Buyer. The Buyer shall cease to be bound by an order PENGG does not, after the Buyer making a written request to this effect by granting a grace period of at least fourteen days, submits an order confirmation or dispatches the relevant delivery.

Subsequent cancellations, ancillary agreements, alterations or modifications of the contract shall be confirmed by PENGG in writing to be valid.

Measures, weights, illustrations, sketches, drawings, customer-specific claims, requests for re-qualification examinations and other documents which are filed by the Buyer will be binding only upon PENGG'S express written confirmation. The scope of the delivery shall depend solely on PENGG'S written order confirmation.

PENGG shall be authorized at any time to rectify mistakes in writing or calculation in offers, order confirmations or invoices.

3. Prices:

In the absence of any different written agreement, the agreed prices shall be valid ex PENGG'S factory and/or distributing warehouse exclusive of packaging. Statutory VAT, if any, as well as any other taxes, charges and customs duties that may be payable shall be solely borne by the Buyer and will be charged separately.

If transport shall be procured by PENGG as agreed, transport and transport

insurance, if any, will be separately charged to the Buyer, and shall not include unloading and the further transport of the goods delivered to the delivery address.

All prices shall be valid subject to any increase and/or decrease of costs of raw materials or the production cost of the goods sold. In the absence of any express written agreement on a fixed price, goods will be invoiced exclusively on the basis of the list prices valid on the date of delivery.

4. Transport, packaging:

In the absence of any different express written agreement, the Buyer shall procure the transport of the goods. If acceptance of the goods by the Buyer is delayed, PENGG may procure the transport of the goods itself, including transport insurance, at the Buyer's cost and expense to his place of residence; PENGG may choose the form of shipment (truck, rail, ship).

PENGG may choose the form of shipment also if it shall procure the transport of the goods as per agreement.

In the absence of any express written instruction of the Buyer to the contrary, PENGG may also take out transport insurance at the Buyer's cost and expense if PENGG has to procure the transport as agreed; such insurance will be charged separately.

Packaging will be charged separately to the Buyer. Unless otherwise agreed in writing, boxes billed and similar wood packaging components will not be taken back.

5. Delivery:

PENGG may carry out and charge partial and pre-deliveries. Compliance with delivery dates and deadlines by PENGG shall depend on the compliance with any obligations and conditions that may be fulfilled by the Buyer prior to the delivery, in particular the clarification of all technical issues. Otherwise, PENGG may postpone the delivery dates and deadlines without being in default.

Compliance with agreed delivery dates and deadlines shall be binding only subject to the occurrence of unforeseeable circumstances or of circumstances which depend on the parties' will such as events of force majeure, warlike events, interventions and prohibitions from authorities in relation to the operation or to operating supplies, lack of staff (not caused by willful misconduct on the part of the Seller), transport and clearance default, traffic blocks, industrial disputes, lack of energy and default in delivery of upstream suppliers; this shall also apply if these circumstances occur with suppliers or sub-suppliers of PENGG. An independent circumstance shall be deemed to exist in particular if the raw materials which are required to execute the order are not delivered to PENGG, are not delivered in time or not in a processable condition.

The occurrence of the above circumstances entitles PENGG, in any event, to extend the delivery dates and deadlines accordingly subject to the scope and continuation of these circumstances and the related consequences without being subject to any consequences of default whatsoever, such as the Buyer's possibility to rescind the contract and/or to assert damages. However, if such circumstances have occurred, PENGG may rescind the contract in whole or in part, and the Buyer may not infer any claims from such a rescission.

Irrespective of the form of shipment, the delivery shall be deemed performed when the goods leave PENGG'S factory and/or distributing warehouse. If goods which are ready for shipment cannot be shipped without PENGG'S fault, the delivery shall be deemed performed on the date on which PENGG gave notice of the readiness for shipment. In this event, the terms of payment agreed shall remain unchanged and PENGG, from the date of the notice indicating readiness for shipment, may charge to the Buyer a reasonable compensation for the storage of the goods or store the goods with a commercial warehouse keeper at the Buyer's cost and expense.

PENGG shall be liable in the event of culpable default in delivery pursuant to Clause 11. If acceptance of the goods by the Buyer is delayed or if he culpably violates any other obligations of participation, PENGG may assert any damage it suffered in this respect, including additional expenses, if any. If PENGG and the Buyer reached a master agreement on a delivery in partial quantities (call order), the Buyer undertakes to disclose to PENGG anticipated delivery dates for the partial deliveries. If

the Buyer does not schedule such an order position for delivery, PENGG reserves the right to carry out the entire delivery after the expiry of 4 calendar weeks from the mentioned anticipated delivery date without granting any further grace period. Any further claims may be asserted.

6. Transfer of risks:

Unless the order confirmation provides otherwise, deliveries shall be "ex factory" within the meaning of EXW (Ex Works Incoterms 2010).

If shipments are delayed due to circumstances within the Buyer's control, the risk shall transfer to the Buyer from the date of the notice indicating readiness for shipment.

7. Payment:

In the absence of any different express written agreement, the agreed price shall be due upon delivery without deduction and payable on an account indicated by PENGG in the agreed currency free and clear of any expenses.

The payment date shall be the date on which the payment is received on PENGG'S account.

Except with PENGG'S prior written consent, the Buyer may not retain or set off any payments based on warranty claims, damage claims or other counterclaims and demands of any manner whatsoever.

PENG G may set off payments made by the Buyer against outstanding claims such that incoming payments will generally be used to settle the earliest debts plus default interest accrued.

If periods for payment were agreed, all of PENG G'S outstanding claims towards the Buyer from all contracts with the Buyer, notwithstanding the terms of payment agreed, shall be immediately due and payable to PENG G without deduction, and the price reductions which may have been granted to the Buyer as opposed to the list prices will be ineffective if the Buyer is in default with a payment due. The same applies to the initiation of insolvency or enforcement proceedings against the Buyer or if the Buyer discontinues to make payment or if PENG G becomes aware of any circumstances which challenge the Buyer's creditworthiness. In this event, PENG G may also demand an advance payment or the provision of security.

Compliance with the payment dates is a material condition for the performance of deliveries by PENG G. In case of any default in payment, PENG G may charge in addition all expenses and costs arising therefrom, also any costs for the intervention of collection companies and/or lawyers, as well as default interest at a rate of 9,2 % p.a. above the relevant base interest rate of the Austrian National Bank.

Checks will be accepted only on account of payment. Any costs for discounting and collecting checks shall be borne by the customer.

8. Rescission:

If the Buyer is in default with the acceptance of the goods, with a payment or any other contractual service, PENG G may either demand performance of the contract and

- a) postpone the fulfillment of its own obligations until the Buyer has provided his overdue services
- b) demand payment of the outstanding remaining purchase price from this and from all other contracts (acceleration of maturity date), and
- c) upon maturity, charge default interest at a rate of 9,2 % p.a. above the relevant base interest rate of the Austrian National Bank or, by granting a reasonable grace period and notwithstanding any damage claims, rescind the contract; this right of rescission may be exercised either with respect to this or with respect to all other contracts.

In addition, PENG G may rescind the contract

- a) if it has justified doubts as to the Buyer's solvency and the Buyer, upon PENG G'S request, does neither make advance payments nor provide a suitable security prior to the delivery;
- b) without granting a grace period, if insolvency proceedings are initiated against the Buyer's assets or if such an application is dismissed for lack of assets to cover costs;
- c) if it turns out subsequently that the delivery cannot be performed.

PENG G may also rescind the contract with respect to any outstanding part of the delivery.

Notwithstanding PENG G'S damage claims, any services or partial services already provided shall generally be settled and paid as agreed if PENG G rescinds the contract. However, PENG G may also demand the return of goods already delivered.

9. Retention of title:

PENG G shall retain exclusive title to the goods it has delivered to the Buyer until full payment of the purchase price plus interest and any costs that may have been caused through PENG G'S collection.

The conditional commodity may not be pledged or assigned to third parties as a security. If the conditional commodity is pledged or otherwise used by third parties, the Buyer shall assert PENG G'S property right and inform PENG G without delay.

As long as title is retained, the Buyer shall insure the full invoiced value of the goods delivered by PENG G under the proviso of title retention against the usual risks and restrict the transferability of the insurance policies upon PENG G'S request in its favor.

If the goods delivered under the proviso of title retention are handled or processed by the Buyer or if they are combined with other items, PENG G will obtain co-ownership in the so developed items in proportion of the invoice value of the goods it has delivered to the value of the new items and/or services.

The Buyer may resell to third parties the goods delivered under the proviso of title retention, either without or after combination, handling or processing, only subject to the express retention of title until full payment of the purchase price by the third parties.

All of the Buyer's future claims arising from the resale of the goods delivered by PENG G under the proviso of title retention may, in any event, not be assigned to third parties, but will be assigned by the Buyer to PENG G already now on account of payment up to the amount of the agreed purchase price along with interest and extra charges, irrespective of whether the conditional commodity is sold without or after combination, handling or processing or whether it is sold to one or several customers. As long as the Buyer complies with his payment obligations, he may collect the claims assigned to PENG G by way of undisclosed assignment himself.

If the Buyer does not comply with his payment obligations in due time or if an application for the initiation of insolvency proceedings is filed, PENG G may demand that the Buyer discloses the assigned claims and their debtors, provides all information which is necessary for collection, hands over the related documents and advises the debtors (third parties) of the assignment.

The payments received by the Buyer to settle the claims assigned to PENG G shall be deemed entrusted to the Buyer in escrow for PENG G to the extent of the assignment, shall be held separately for and paid to PENG G without delay, irrespective of the terms of payment agreed with the interim Buyer and/or PENG G.

PENG G undertakes to release the securities it is entitled to upon the Buyer's request insofar as the realized value of its securities exceeds the claims to be secured by more than 20 %. PENG G may choose the securities to be released at its discretion.

In the absence of an express statement by PENG G to the contrary, the assertion of the retention of title by PENG G shall not be deemed a rescission of the contract.

Goods replaced and/or exchanged within the scope of warranty will be covered again by warranty, provided the goods originally delivered are still subject to retention of title.

10. Warranty:

The warranty period shall, in any event and irrespective of a detection of defects, not exceed 12 months from the date of the transfer of risk.

The Buyer shall be entitled to a warranty claim only if the Buyer gives detailed written notice to PENG G of apparent defects within 24 hours after receipt of the goods and/or of hidden defects within 8 days

after detection, and proves such defects within 2 weeks after the date on which notice was given.

The Buyer shall be required to prove any defect of the goods delivered. Sections 924 and 933b of the Austrian General Civil Code shall not apply.

Primarily at PENGG'S discretion, the warranty claim shall be restricted to the rectification and/or exchange of the goods delivered or to the reduction of the purchase price and shall, in any event, not exceed the invoice value of the defective goods delivered. If PENGG decided to rectify defects and has not remedied the defects within its control after two attempts and made substitute delivery according to customary quality and performance, the Buyer may rescind the contract or reduce the purchase price.

If goods are manufactured based on the Buyer's drawing, PENGG shall only be liable for performance according to the drawing. If PENGG shall resolve construction tasks, defectiveness may be asserted only if the Buyer proves that PENGG'S product does not correspond to the state of the art due to PENGG'S fault.

Any claims that may be asserted under warranty will lapse immediately if the Buyer himself or a third party tries to remove defects of or to repair the goods delivered without PENGG'S express written consent. PENGG will, in any event, not accept invoices for such acts.

PENGG will in particular not accept any warranty for claims which are due to inappropriate or improper use, defectiveness of the materials made available by the Buyer, defective assembly and/or putting into operation by the Buyer or third parties, normal wear and tear, defective or negligent treatment or inappropriate operating resources and replacement materials.

PENGG shall not be obliged to remove defects as long as the Buyer does not satisfy his payment obligations.

Any work or deliveries due to warranty will not extend the original warranty period.

It is the Buyer's sole risk whether the goods delivered are fit for his intended purpose in a particular case, and PENGG will not accept any warranty in this respect.

11. Damages:

Any liability for the compensation of damages shall be restricted to willful misconduct or gross negligence. In the case of slight negligence, PENGG shall exclusively be liable for personal injury, if any.

Any damage shall be excluded, unless PENGG or a servant attributable to PENGG acts with intent or gross negligence. PENGG'S liability towards Buyers shall be restricted to damage which is caused to the deliveries themselves but shall not extend to consequential defects. Any liability of PENGG for indirect damages, lost profits, lost interest, lost savings, consequential damages and purely monetary damages, third party claims, the loss of data or software as well as their reconstruction shall be excluded.

Any claims against PENGG shall be subject to a statute of limitations of six months of the Buyer becoming aware of any damage and the injuring party, but shall in no event exceed three years.

These provisions shall not affect the provisions of the Product Liability Act.

12. Data privacy:

The Buyer expressly consents that his personal data, namely company name, name, address, company registration number and date of birth as well as any liabilities for purposes of creditchecks as well as any related activities of auditors maybe process and transmitted to creditor protection associations, credit institutions, affiliates of PENGG as well as auditors. This consent maybe revoked at any time by letter to PENGG Austria GmbH, 8621 Thörl, or by email to office@wire-pengg.com. PENGG may transmit these data to third parties if PENGG is obliged to disclose these data to authorized parties within the scope of statutory provisions.

PENGG will use its efforts to protect customer data it has stored to the best possible extent. However, PENGG disclaims any liability that third parties may unlawfully gain access to these data and will use such data in any manner whatsoever. PENGG shall in particular not be liable for damage which results from any such unlawful act of third parties.

13. Intellectual property rights:

PENGG disclaims any liability that items made to order or special developments constitute an infringement of patent rights, trademark rights, design patent rights, copyrights or other rights of third parties. The Buyer shall also be responsible that the workshop drawings presented by the Buyer do not infringe upon property rights of third parties. PENGG shall not be obliged towards the Buyer to examine whether the processing of offers infringes upon any property rights of third parties due to the workshop drawings sent by the Buyer. The customer shall therefore hold harmless and indemnify PENGG if any such claims are asserted by third parties.

14. Final provisions:

All notices, notifications, reminders, settings of time-limits, notices of defects and other legal declarations between PENGG and the Buyer shall be made in writing to be legally effective.

Place of performance for all services, in particular also payments, from the contract shall be *A-8621 Thörl, Austria*, even the goods are handed over at another place as agreed. The contract and all legal relationships from and in connection with this contract shall be exclusively governed by and construed in accordance with Austrian law. The parties exclude the application of the UN Sales Convention (United Nations Convention on Contracts for the International Sale of Goods). Exclusive place of jurisdiction for all disputes arising directly or indirectly from the contract and its termination and from deliveries and/or services shall be the court in *Graz/Austria* having subject-matter jurisdiction. However, PENGG may also refer disputes to another court having jurisdiction for the Buyer.

Provided that any provision of these Terms and Conditions of Sale and Delivery or part of such provision is or becomes invalid or unenforceable, then the validity or enforceability of the remainder of these Terms and Conditions of Sale and Delivery shall not be affected. Any such invalid or unenforceable provision shall be deemed replaced by an appropriate provision which comes closest to the economic purpose of the original provision. These provisions shall apply mutatis mutandis if these Terms and Conditions of Sale and Delivery contain an unintended contractual gap.