

General Terms and Conditions of Sale and Delivery of Pekrun Getriebbau GmbH

For use with:

- (1) A person who through the conclusion of the contract exercises their commercial, or independent professional activity (entrepreneur);
- (2) Legal entities under public law or special purpose entities under public law.

Section 1 General

- (1) All deliveries and services shall be based on these Terms and Conditions as well as on any separate contractual agreements. Any deviating conditions of purchase of the purchaser shall not, by virtue of order acceptance, form part of the contract.
- (2) In the absence of a specific agreement, a contract shall come into effect with the written order confirmation of the supplier.
- (3) The supplier shall reserve property and copyright rights to patterns, cost estimates, drawings and similar tangible and intangible information – also in electronic form and these must not be made accessible to third parties. The supplier shall commit to only make information and documentation designated as confidential by the purchaser accessible to third parties with the consent of the purchaser.

Section 2 Price and payment

- (1) The prices shall apply, in the absence of a specific agreement, ex works including loading in the factory, but excluding packaging and unloading. Value added tax at the applicable legal level shall be added to the prices.
- (2) In the absence of a specific agreement, payments shall be made without any deduction to the bank account of the supplier and specifically:
 - 1/3 advance payment after receipt of the order confirmation,
 - 1/3 as soon as the purchaser has been notified that the main parts are ready for shipment,
 - the remaining amount within one month of the transfer of risk.
- (3) The purchaser shall only have the right to withhold payments to the extent that its counter-claims are undisputed or legally established.
- (4) The purchaser shall only be entitled to an offset right with counter-claims from other legal relationships to the extent that they are undisputed or legally established.
- (5) In all cases the purchaser shall reimburse the supplier for any reminder and collection costs incurred due to further damage caused by default.

Section 3 Cancellation costs

If the purchaser should withdraw from an assigned order, the supplier shall be entitled to claim 10% of the sales price for the costs incurred in processing the order, notwithstanding the possibility of asserting a higher actual claim. The purchaser shall reserve the right to prove a lower damage level.

Section 4 Delivery time, delivery delay

- (1) The delivery time is based on the agreements between the contractual parties. Its compliance by the supplier shall assume that all commercial and technical issues have been clarified between the contractual parties and that the purchaser has fulfilled all obligations incumbent on it, such as its provision of the requisite official certifications or approvals, materials or supplies on-site or the completion of an advance payment. If this is not the case the delivery time shall be extended appropriately. This shall not apply where the supplier is responsible for the delay.
- (2) The date specified by the supplier in the order confirmation shall apply as the binding delivery time, provided that there has been no amendment to the order. Any amendment made to the order at a subsequent time – regardless of whether it is a technical or commercial amendment – results in the automatic invalidity of the delivery date originally agreed or specified in the order confirmation. It shall be incumbent on the purchaser to agree the delayed delivery date with the supplier that was caused due to its order amendment. The grounds for the determination of the new delivery date are stated in Paragraph 4, Clause 1. Any amended delivery date shall only be binding when it is confirmed in writing by the supplier.
- (3) Compliance with the delivery time shall be subject to the correct and timely delivery to the supplier. The supplier shall notify the purchaser as soon as possible if delays become apparent.
- (4) The delivery time is deemed complied with, if the delivery item has left the factory of the supplier before its expiry or if the readiness to ship has been notified. If the goods are to be subject to an acceptance process – except for justified rejection of acceptance – the acceptance date applies, alternatively the notification of readiness for acceptance.
- (5) If shipping or acceptance of the delivery item is delayed on grounds for which the purchaser is responsible, the purchaser will be charged for any costs ensuing due to the delay starting one month after the notification of the readiness to ship or acceptance.
- (6) If non-compliance of the delivery time is due to force majeure, industrial disputes, the outbreak of a pandemic or other events which are outside the sphere of influence of the supplier, the delivery time shall be extended appropriately. The supplier shall notify the purchaser of the beginning and end of such circumstances as soon as possible.
- (7) The purchaser may withdraw from the contract without giving notice if it ultimately becomes impossible for the supplier to perform the service in full before the transfer of risk. The purchaser may also withdraw from the contract, where within an order the performance of one part of the delivery becomes impossible and it has a legitimate interest in rejecting the partial delivery. If this is not the case the purchaser shall pay the contractual price attributable to the partial delivery. The same applies in the case of the incapacity of the supplier. Paragraph 8, Clause 2 shall also apply.
- (8) If the impossibility or incapacity occurs during the acceptance delay or if the purchaser is solely, or predominately responsible for these circumstances, it is under the obligation to pay compensation.
- (9) If the supplier defaults in its performance and this leads to damages being incurred by the purchaser, it shall be entitled

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to demand a fixed delay compensation fee. This shall amount to 0.5% for each full week of delay, but in total a maximum of 5% of the value of that part of the total delivery, which due to the delay cannot be used promptly nor in accordance with the contract.

- (10) If the purchaser – taking statutory exceptional cases into consideration – sets the supplier an appropriate extension period after the due date to perform the service and the deadline is not complied with, the purchaser shall be entitled to withdraw within the framework of statutory provisions. It shall be under the obligation, upon the request of the supplier, to state within a reasonable timeframe whether it shall be availing itself of its right to withdraw.
- (11) Further claims arising from the delivery default shall be determined exclusively pursuant to Paragraph 8 Clause 2 of these Terms and Conditions.

Section 5 Transfer of risk, acceptance

- (1) Risk shall be transferred to the purchaser with the despatch of the delivery item from the factory, and indeed also when partial deliveries are made or if the supplier has also assumed other services such e.g. shipping costs or delivery and assembly. If the goods are subject to an acceptance process, transfer of risk is based on this acceptance. This must be performed immediately on the acceptance date, alternatively after the notification of the supplier of readiness for acceptance. The purchaser may not refuse acceptance in the event of an insignificant defect.
- (2) In the event of delay or failure of the dispatch or acceptance on grounds which are not attributable to the supplier, the risk shall be transferred to the purchaser from the day of notification of the dispatch or readiness for acceptance. The supplier shall commit to conclude insurance policies at the cost of the purchaser that it requests.
- (3) Partial deliveries shall be permitted if reasonable for the purchaser.

Section 6 Retention of title

- (1) The supplier shall retain ownership of the delivery item until receipt of all payments arising from the delivery contract, also including additional ancillary payments owed.
- (2) The supplier shall be entitled to insure the delivery item at the expense of the purchaser for theft, breakage, fire and water and other damages, unless the purchaser can prove it has taken out an insurance policy itself.
- (3) The purchaser may neither sell, pledge nor assign the delivery item as security. In the event of distraints or seizures or other orders by third parties, it must immediately notify the supplier accordingly.
- (4) If the goods are processed by the purchaser, it shall be agreed that the processing shall be performed on behalf of and on account of the supplier as the manufacturer and that the supplier will immediately acquire ownership of the newly created item in proportion to the value of the newly created item.
- (5) In the event of a resale of the goods subject to retention of title, the customer shall assign any ensuing claims against the acquirer to the supplier as collateral.
- (6) If the purchaser conducts itself in a way contrary to its contractual obligations, in particular in the event of a payment default, the supplier shall be entitled after issuing a written reminder, to the return of the delivery item and the purchaser shall be under the obligation to surrender it.
- (7) Due to the retention of title the supplier can only demand the return of the delivery item if it has withdrawn from the contract.
- (8) An application to open insolvency proceedings shall entitle the supplier to withdraw from the contract and demand the immediate return of the delivery item.

Section 7 Defect claims

The supplier shall be liable for material defects and defects of title in the delivery to the exclusion of further claims – subject to Paragraph 8 as follows:

Material defects

- (1) All those parts which prove to be defective due to a circumstance that exists prior to the transfer of risk shall either be repaired or replaced as defect-free at the discretion of the supplier. The establishment of such defects is to be notified immediately in writing to the supplier. Replaced parts shall become the property of the supplier.
- (2) In coordination with the supplier, the purchaser shall grant the supplier the necessary time and opportunity to undertake all the repairs and replacement deliveries that appear necessary to the supplier; otherwise the supplier shall not be liable for any ensuing consequences. Only in urgent cases which may endanger operational safety and to avert disproportionately large damages, whereby the supplier must be notified immediately, shall the purchaser have the right to remove the defect itself or have it removed by third parties and to demand reimbursement of the necessary costs from the supplier.
- (3) The supplier shall assume – in the event of a justified complaint – the requisite costs for the purposes of the supplementary performance, provided that this does not result in a disproportionate burden on the supplier. Also within the scope of its statutory obligation, with the sale of a newly manufactured item it shall reimburse, the costs incurred by the purchaser within the framework of recourse claims in the supply chain.
- (4) Within the framework of statutory provisions the purchaser shall have a right to withdraw from the contract if the supplier – taking statutory exceptional cases into consideration – allows a reasonable extension to fruitlessly elapse that has been granted to him for the purposes of a repair or substitute delivery due to a material defect. If there is only an insignificant defect the purchaser shall only have the right to a reduction in the contractual price. Otherwise, the right to a reduction in the contractual price shall remain excluded.
- (5) Further claims shall be determined exclusively pursuant to Paragraph 8 Clause 2 of these Terms and Conditions.
- (6) No liability shall be assumed in the following cases:
Unsuitable or improper use, defective assembly or commissioning by the purchaser or third parties, natural wear and tear, defective or negligent handling, improper maintenance, the use of unsuitable operating materials, imperfect

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construction work, unsuitable foundation soil, chemical, electrochemical or electrical influences – provided they are not the responsibility of the supplier.

- (7) If the purchaser or a third party undertakes an improper repair, the supplier shall not be liable for any ensuing consequences. The same shall apply to any changes made to the delivery item without the prior consent of the supplier.

Defects of title

- (8) If the use of the delivery item leads to the infringement of industrial property rights or copyrights within Germany, the supplier shall, at its own expense, make available to the purchaser the right of further use or it shall modify the delivery item for the purchaser in a reasonable way and in such a manner that the property right infringement no longer exists.
- (9) If this is not possible at commercially reasonable conditions or within a reasonable time period, then the purchaser shall be entitled to withdraw from the contract. In the event of the aforementioned pre-conditions, the supplier shall also have the right to withdraw from the contract.
- (10) In addition, the supplier will exempt the purchaser from any undisputed or legally established claims arising from the relevant property rights holders.
- (11) The obligations of the supplier stated in Paragraph 7, Clause 8 shall be conclusive subject to Paragraph 8, Clause 2 in the event of an industrial property right or copyright infringement.

They only shall exist when

- the purchaser immediately notifies the supplier of any asserted industrial property rights or copyright infringements,
- the purchaser supports the supplier to a reasonable extent in rejecting the asserted claims or enables the supplier to perform the modification measures in accordance with Paragraph 7, Clause 8,
- the supplier reserves the right to all defence measures including any out-of-court settlements,
- the defect of title is not based on an instruction of the purchaser and
- the legal infringement was not caused by the fact that the purchaser arbitrarily changed the delivery item or used it in a manner not stipulated by the contract.

Section 8 Liability of the supplier, exclusion of liability

- (1) If the delivery item cannot be used by the purchaser in the manner stipulated by the contract due to culpably omitted or defective proposals or advisories from the supplier which were provided before or after the conclusion of the contract, or due to the culpable infringement of other contractual secondary obligations, in particular instructions for the operation and maintenance of the delivery item, then the provisions of Paragraphs 7 and 8 Clause 2 shall apply with the exclusion of further claims by the purchaser.
- (2) The supplier shall only be liable for damages not incurred to the repair item itself – on whatever legal grounds –
- a) in the event of intent,
 - b) in the event of culpable injury to life, limb or health,
 - c) in the event of defects it has fraudulently concealed,
 - d) in the case of gross negligence of the owner / entities or leading employees,
 - e) within the framework of a warranty commitment,
 - f) in the event of defects in the delivery item if there is liability pursuant to the Product Liability Act for personal injuries or material damage to privately used items.
- In the event of a culpable infringement of essential contractual obligations or in the event of gross negligence of non-leading employees and in the event of slight negligence, in the latter case, the supplier shall be liable for typical contractual damages which can reasonably be foreseen.
Further claims shall be excluded.
- (3) If the seller gives technical information or acts on a consultancy basis and this information or consultancy does not form part of the contractually agreed obligations and performance scope, this shall occur free-of-charge and with the exclusion of all liability.

Section 9 Limitation period

All claims of the purchaser – irrespective of the legal grounds – shall expire in 12 months; this shall also apply to the limitation period of recourse claims in the supply chain pursuant to Section 445b (1) BGB, provided that the last contract in this supply chain is not a purchase of consumer goods. The expiry suspension from Section 445b (2) BGB shall remain unaffected. For compensation claims according to Paragraph 8, Clause 2 a-d and f the statutory periods shall apply. They shall also apply to defects in a structure or for delivery items which were used for a structure in accordance with their intended purpose and which caused their defectiveness.

Section 10 Software usage

If software is included in the delivery scope, a non-exclusive right shall be granted to the purchaser to use the software supplied including its documentation. The right shall be assigned for the use of the specified delivery item. Use of the software on more than one system is forbidden. The purchaser may only duplicate, rework, translate the software or convert the object code into source code in the legally admissible extent (Sections 69 a et seq. German Copyright Act [UrhG]). The purchaser shall commit not to remove any details of the manufacturer, in particular copyright mentions or to change them without the prior express consent of the supplier. All other rights to the software and to its documentation shall remain exclusively with the supplier or with the software supplier as applicable. Granting sub-licenses shall not be admissible.

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Section 11 Applicable law, place of jurisdiction

- (1) For all legal relationships between the supplier and the purchaser the applicable law of the Federal Republic of Germany exclusively shall apply to the legal relationships between all domestic parties.
- (2) The place of jurisdiction shall be the court of competent jurisdiction for the head office of the supplier. However, the supplier shall also be entitled to file a claim at the head office of the purchaser.

Section 12 Final provisions

If the contract or these General Terms and Conditions of Delivery should contain loopholes, then to fill any such loopholes those legally valid rules shall be deemed as agreed that would have been agreed by the contractual partners in accordance with the commercial objectives of the contract and the purpose of these General Terms and Conditions of Delivery if they had identified these regulatory loopholes.