

General Terms of Sale and Delivery of Pandrol Germany GmbH

Last updated: July 2017

§ 1 Scope

1. These Terms of Sale and Delivery apply solely vis-à-vis entrepreneurs, legal persons under public law or special funds under public law within the meaning of Sect. 310 (1) of the German Civil Code (BGB).
2. Only these General Terms of Sale and Delivery shall apply. Different or opposing terms and conditions are not recognised by us unless we have expressly consented to them in writing. This requirement for consent shall apply in all cases, including where we have made unconditional delivery to our client whilst being aware of said client's terms and conditions.

§ 2 Offer and contract

1. Our offers are always subject to change and non-binding.
2. Orders only have a binding effect on us insofar as we confirm them in writing or perform them by shipping the items concerned. Our order confirmation is final in respect of the scope of delivery.
3. Oral ancillary agreements only have a binding effect on us insofar as we have confirmed them in writing.

§ 3 Prices and payment

1. Unless otherwise agreed in writing, our prices are ex works and include the standard packaging determined by us and do not include statutory VAT. A surcharge shall apply for any packaging type specially requested by the customer, as well as for transport insurance. Any customs duties, fees, taxes and other statutory levies shall also be borne by the customer.
2. Insofar as no binding agreement has been made in respect of the price, we reserve the right to make appropriate price adjustments that reflect changes in wage, material or sales costs in respect of deliveries that are made 3 months or more following the conclusion of the contract.
3. Unless otherwise agreed, the purchase price shall be payable less a 2% cash discount within 10 days of delivery, and payable in full thereafter. Default interest will be charged at a rate of 8% above the applicable base rate per annum. We reserve the right to assert higher default damages.
4. We only accept promissory notes, cheques and other payment instructions as conditional payment. The expenses and costs associated therewith, as well as the liability for timely presentation and protestation, shall be borne solely by the customer.

§ 4 Offsetting and rights of lien

1. The customer shall only be entitled to offset counterclaims if said counterclaims have been upheld by a court of law and can no longer be appealed, or if the counterclaims are uncontested. The customer is only entitled to exercise a right of lien insofar as their counterclaim relates to the same contractual agreement.

§ 5 Delivery time

1. The delivery time quoted by us shall only begin once all technical issues have been resolved and once the customer has met all their obligations in a timely and proper manner. We reserve the right to advance the defence of unperformed contract.
2. Delivery times are subject to us receiving correct and timely delivery.
3. If the customer falls into default of acceptance or culpably breaches any other obligations to cooperate, we are entitled to demand compensation for the damages incurred as a result, including any additional expenses. We reserve the right to assert higher damages. Insofar as the aforementioned conditions apply, the risk of accidental destruction and accidental deterioration of the goods passes to the customer at the point in which the customer falls into default of acceptance or other default.
4. The supplier is only entitled to make customary delivery instalments or part performance if the customer can be reasonably expected to accept said delivery instalments or part performance. In particular, the customer can be reasonably expected to accept the delivery instalment or part performance if
 - a) the delivery instalment can be used by the customer for the contractually agreed purpose;
 - b) delivery of the remaining goods ordered is assured; and
 - c) the customer does not incur any significant additional costs or expenses as a result (unless the vendor agrees to bear these costs).

§ 6 Transfer of risk during shipping

1. If, at the request of the customer, the goods are sent to said customer, the risk of accidental destruction or accidental deterioration is passed on to the customer upon dispatch to the customer and no later than the point at which the goods leave the factory/warehouse. This applies irrespective of whether the goods are dispatched from the place of performance and irrespective of who bears the shipping costs.

§ 7 Retention of title

1. We shall retain the title on the goods supplied until all claims arising from the delivery agreement have been paid in full. This also applies in respect of all future deliveries, even if we do not always make explicit reference thereto. We are entitled to retake possession of the goods if the customer breaches the terms of the contract.
2. Until such time as ownership of the goods has been transferred to the customer, the customer shall handle the goods with care and notify us immediately in writing if the goods supplied are seized or

subjected to any other third-party intervention. The customer is liable for any losses incurred by us insofar as the third party is unable to compensate us for the court and out-of-court costs of legal action pursuant to Sect. 771 of the German Code of Civil Procedure (ZPO).

3. The customer is entitled to resell the goods subject to retention of title in the normal course of business. The customer cedes the claims made against the buyer in the resale transaction to us at this juncture and in the amount of the final invoice amount that the customer has agreed with us (including VAT). This cession applies irrespective of whether or not the goods have been resold following further processing. The customer remains authorised to collect payment, even after cession. This does not impinge upon our right to collect payment ourselves. We will, however, refrain from collecting payment as long as the customer meets their payment obligations arising from the proceeds earned, does not fall into payment arrears and, in particular, does not file an application to open insolvency proceedings or discontinue payment.
4. The handling, processing or conversion of the goods by the customer is always done in our name and on our behalf. In this instance, the vested right of the customer in respect of the goods shall continue to remain in respect of the converted goods. Insofar as the goods are processed with other objects not belonging to us, we shall acquire co-ownership of the new goods in the ratio of the objective value of the goods sold by us to the other processed objects at the time of processing. The same applies in respect of mixing. Insofar as the mixing takes place in such a way that the customer's goods are to be deemed the main goods, it is hereby agreed that the customer shall transfer proportionate co-ownership to us and reserve the resulting sole ownership or co-ownership for us. To secure our claims against the customer, the customer shall also cede to us any claims it has against a third party arising from the act of installing the goods subject to retention of title to a plot of land; we hereby accept this cession.
5. We hereby agree to release the collateral to which we are entitled at the request of the customer if their value exceeds that of the underlying claims by more than 20%.

§ 8 Description of properties, no guarantee

Our goods are suitable for welding for at least 24 months from their date of delivery. We do not, however, vouch for this property in the form of a guarantee (unconditional and irrespective of culpability).

§ 9 Warranty and notification of defects, as well as recourse/manufacturer recourse

1. Warranty claims lapse after 60 months from the date on which the goods supplied by us were delivered to the customer, insofar as the goods have been processed or installed within 24 months of delivery being completed. Otherwise, warranty claims lapse within 24 months of the date on which the goods were delivered to the customer. This does not impinge upon statutory, inalienable special regulations on limitation periods (particularly Sections 444 and 479 of the German Civil Code [BGB]). Claims for damages asserted by the customer that are based on intentional or grossly negligent breaches of contract on our part or on the part of our agents, claims for damages – including those due to minor negligence – relating to loss of life, physical injury or damage to health and claims for damages pursuant to the German Product Liability Act (*Produkthaftungsgesetz*) only lapse upon expiry of the statutory limitation periods.
2. If, despite all care taken, the goods supplied exhibit a defect that was present at the time of risk transfer, we will – subject to timely notification of said defect – provide replacement items. We must always be given an opportunity to effect subsequent performance in an appropriate time frame. Claims for recourse remain unreservedly unaffected by the aforementioned provision.
3. If subsequent performance fails, the customer may – without prejudice to any claims for damages – withdraw from the contract or reduce payment.
4. Warranty claims do not apply in the event of minor deviations from the agreed condition, minor impairments to usability, natural wear and tear and in the event of defects that arise following the transfer of risk due to incorrect or negligent handling, excess strain, unsuitable equipment, deficient construction work, unsuitable terrain or due to particular external influences that are not preconditions of the contract. If improper maintenance work or changes are carried out by the customer or a third party, there shall be no warranty cover in respect thereof or in respect of any consequences arising thereof.
5. Claims asserted by the customer in relation to the expenses necessary for the purpose of subsequent performance – particularly transport, travel, labour and material costs – are excluded, insofar as the expenses increase due to the goods supplied by us being brought to a place other than the customer's place of business unless this is done in a way that corresponds with the intended use of the goods.
6. Claims for recourse asserted by the customer against us shall only apply insofar as the customer has not concluded any agreements with its customer that go above and beyond statutory warranty provision.

§ 10 Miscellaneous

1. This agreement and all legal relations between the parties are governed by the laws of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
2. The place of performance and sole place of jurisdiction for all disputes arising from this agreement is our place of business insofar as not otherwise stated on the order confirmation.

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3. All agreements that have been reached between the parties for the purpose of performing this contract are recorded in writing in this contract.
4. In the event that certain provisions of this contract are or become invalid, of if this contract contains a gap, this does not affect the remaining provisions. The Parties hereby undertake to replace the invalid provision with a legally permissible provision that comes closest to the commercial intention of the invalid provision or closes the contractual gap.