

# PSG PROCUREMENT SERVICES GMBH

## General Terms and Conditions of Trade

### 1. General information, scope of application

1.1. We solely supply according to the following conditions. Deviating buyer's conditions only apply if they concur with our conditions or if we explicitly accepted their validity in written form. The present sales conditions also apply if we perform deliveries without reservation being aware of conflicting or deviating buyer's sales conditions.

1.2. These General Terms of Sale and Delivery only apply to entrepreneurs. In this form, they are also valid for future contracts between PSG as seller and the buyer, even if they are not presented additionally in separate form.

### 2. Offers

2.1. Our offers are without obligation. They can be withdrawn until receipt of the buyer's order.

2.2. We accept the buyer's offer within a term of two weeks. We reserve the right to reject offers.

### 3. Delivery

3.1. As far as we or the suppliers who are assigned by us provide packaging and means of transport, only the packaging conditions to be particularly stipulated between the buyers and the suppliers are valid. If the buyer is in default with the return of the means of transport (e.g. pallets), in any case, we reserve the right to charge the buyer the incurred expenses and rents.

3.2. As long as the buyer is in delay with a liability, our obligation to supply rests. If the buyer is in default of acceptance or culpably violates any other obligations of cooperation, we are entitled to demand compensation including possible additional expenses. Further claims remain reserved.

3.3. Shipment and dispatch are carried out according to the agreements with our supplier. As far as possible, we will respect the buyer's wishes and interests regarding the shipping mode and the shipping method. Resulting additional costs are borne by the buyer, even if freight with delivery is agreed.

3.4. For agreed freight, the prices quoted by us are based on the freights and additional charges valid at the time of the offer. These prices may be adjusted in our favor or at our expense to changed freight and additional charge rates for the delivery, without the buyer being entitled to the extent of a right of withdrawal from the contract.

3.5. The delivery is subject to a timely and sufficient self-delivery. If the agreed delivery time or delivery deadline is not met, we are obliged to a compensation for damages only in case of intentional or grossly negligent behavior.

3.6. Unpreventable circumstances or events not caused by us that delay delivery, make delivery impossible or unbearably impede delivery; e.g. war, force majeure, forces of nature, accidents, traffic and operational disruptions, lack of raw materials and energy, strike or lockouts; release us – even if occurred **with our** suppliers – from the obligation to deliver for the duration of the impediment and a reasonable starting-up period. If the impediment is likely to be finished within a reasonable timeframe, we have the right to completely or partly withdraw from the contract without any obligation to deliver later.

#### **4. Prices**

4.1. For the lack of deviating agreements all deliveries are unfree ex works or warehouse excluding additional costs (especially transport, customs duty, packaging, insurance, withdrawal costs and costs of disposal of the packaging material). The prices quoted in our offers are to be understood with separate identification of the value added tax.

4.2. Our prices are determined according to the PSG database (catalog system), which are respectively available at the time of the conclusion of the contract or arise from an explicit offer. **The buyer will be charged** the price plus the legal VAT valid at the day of the delivery. We reserve the right to increase our prices reasonably in the case of contracts, in which there are more than three months difference between the closure of the contract and the agreed delivery or the last partial delivery or if there are unforeseeable and unjustifiable cost increases, in particular due to material costs, increases of commodity prices, auxiliary material prices, wage settlements, cargo or public charges. Thereby, we will balance cost increases and cost reductions against each other. The cost change will be proven to the purchaser on demand.

#### **5. Payment**

5.1. Payments are due net within 14 days after the reception of the invoice. The punctuality of the payment depends on the receipt of the amount at our unrestricted disposal.

5.2. We reserve the right to electronically transfer the invoice via e-mail. In the case of a transmission of personal data to us, the buyer is obliged to inform the respective person on time subject to article 14 of the EU-General Data Protection Regulation, No 2016/679 about the data processing through us. We refrain from providing the information to the respective person.

5.3. The presentation of bills of exchange requires our approval. Bill of exchange charges and costs as well as the risk of timely presentation and protest shall be borne by the buyer.

5.4. If the term of payment is exceeded or if the full amount is not paid on time, the buyer shall be in delay at the latest 30 days after maturity and receipt of invoice, even without any reminder. According to the German Civil Code (BGB), section 247, we are entitled to charge an interest rate of 9 percentage points above the respective basic interest rate, irrespective of other claims, since occurrence of default on claims for payment.

5.5. If the buyer is in default of payment or if reasonable doubts arise as to his solvency, we are authorized to declare all claims against him immediately due and payable and/or

request securities even before delivery, to completely or partly withhold outstanding deliveries regarding this or other contracts or to withdraw from existing contracts.

5.6. Offsets by the purchaser are excluded, except for written agreement or with legally effective or undisputed counterclaims.

## **6. Warranty**

6.1. Claims for defects by the customer, who is a merchant, presuppose that he/she fully complies with his/her inspection and complaint obligations owed, according to section 377, German Commercial Code (HGB). This means that the customer shall notify us in written form of any obvious defects immediately after delivery, of any hidden defects immediately after they have been discovered, stating the defective goods, the nature of the defect, the batch number, the day of delivery and the object in which the product was planned to be incorporated. In case of obvious defects and lack of a written reprimand within 14 days since delivery, non-merchants lose their warranty rights, if freedom from defects was not warranted or the person acted fraudulently. We do not grant warranty for defects that occur due to improper use or instruction contradicting processing or use by the buyer.

6.2. Claims of the buyer for defects shall become time-barred regardless of section 202, paragraph 1 of the German Commercial Code (BGB) within 12 months from delivery and/or hand-over or acceptance at the place of fulfilment.

6.3. In the event of a deficiency, which is properly notified pursuant to the above-mentioned regulation, we primarily grant replacement or rectification of the defect. If this fails, the buyer can choose to either withdraw from the contract or reduce the remuneration.

## **7. Limitation of liability**

We are liable for intent and gross negligence as well as for a culpable breach of major contractual obligations. In case of minor negligence of essential contractual duties, our liability is limited to the contractually typical, foreseeable damage. Liability due to culpable injury to life, body or health remains unaffected; this also applies to the liability according to the product liability law. All further claims for compensation for damages are excluded.

## **8. Retention of title**

8.1. The merchandise shall remain our property until full payment of all claims, to which we are entitled against the buyer, including balance claims. Working and processing of the goods are only carried out for us under the exclusion of the acquisition of property of the fabricator and processor, but without obligation to us. If the item is processed with other items not belonging to us, we acquire the co-ownership in the new item in proportion to the value of the item purchased to the value of the new item. If we acquire ownership or a co-ownership of the new item, we assign our ownership or our co-ownership of the new product to the buyer subject to the suspensive condition of the full purchase price payment.

8.2. If the goods are inseparably mixed with other goods not belonging to us, we acquire the co-ownership of the new item in proportion of the value of the goods to the other mixed good at the time of the mixture under the resolutive condition of a complete purchase price payment. If the mixing takes place in such a way that the item of the buyer is to be regarded as the main item, it shall be deemed agreed that the buyer assigns proportional co-ownership to us under the resolutive condition of a complete purchase price payment. The buyer shall safely store the resulting sole property or co-property for us.

8.3. The buyer is authorized to sell the goods subject to retention of ownership in the ordinary course of business. This authorization expires if the buyer is in delay or if he agrees with his customers that the claim is not assignable.

8.4. In the event that the buyer sells the goods, he hereby automatically assigns all resulting claims against his customer in full to us, even if they include remuneration for work, with all supplementary rights, especially securities, but not more than 110 % of the outstanding claims. We accept this assignment. The first sentence is also valid in the case that the buyer processes, mixes or mingles the goods with other goods that were delivered by us. Upon request, the buyer is obliged to disclose the assignment and provide the necessary information and documents. If the buyer agreed a current account relationship with his contractual parties, the pre-assignment also extends to the balance claim arising from this current account relationship.

8.5. The buyer has the revocable right to collect the claims assigned to us himself as long as he is not in delay.

8.6. If we make use of the retention of title, the buyer is obliged to return the goods at his own expense and loses his right to ownership. He is liable for the reduced value and the redemption cost as well as for the loss of profit. He shall immediately inform us if a third party violates our rights.

8.7. At request of the buyer, we undertake to release the securities due to us to the extent that the value of the securities exceeds the claims to be secured by 10 %. The selection of the securities to be released is our responsibility.

## **9. Place of performance and jurisdiction**

9.1. The place of performance for the delivery is the respective place of departure of the goods; for the payment it is our domicile.

9.2. The place of jurisdiction for all legal disputes (including bill of exchange and cheque claims) originating from the contractual relationship as well as of its development and its effectiveness is our domicile, if the buyer is a merchant, a legal person under public law or a special fund under public law. We are also entitled to sue the buyer in his general court jurisdiction.

## **10. Data protection**

For information on data protection please see our privacy statement online: [www.psg-procurement.com/en/data-policy](http://www.psg-procurement.com/en/data-policy)

## **11. Final clauses**

11.1. Should one of the above clauses become ineffective or not be part of the contract, this shall not affect the validity of the remaining conditions. In this case, the parties hereby engage to enter into negotiations with the aim of replacing the invalid clause by a clause that best reflects the original commercial intent of the parties.

11.2. The legal provisions between the buyer and us are exclusively subject to the German law excluding the regulations of the private international law.

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As of 01/2021