

Pacoma GmbH - General Conditions of Delivery

The following general terms and conditions of delivery applies to („Buyer“):

1. any person acting in a commercial or freelance capacity
2. any legal entity of public law or of special fund under public law

„Supplier“ refers to Pacoma GmbH

I. General

1. The terms and conditions stipulated herein apply to all deliveries and services provided, as well as to separate contractual agreements. Any condition of purchase by the Buyer contrary to the provisions herein shall not constitute subject matter of the contract even through order confirmation by the Supplier.
In the absence of a separate agreement, a contract exists when the supplier confirms the Buyer's order in writing. The general terms and conditions of the Buyer applies only insofar as the Supplier has agreed thereto in writing.
2. The Supplier reserves all rights to samples, cost estimates / offers, drawings and similar information be it tangible or intangible - including in electronic form - retaining all titles and copyright; they may not be made accessible to third parties. The Supplier undertakes to only make information and documents designated by the Buyer as confidential accessible to third parties with the Buyer's consent.

II. Price and Payment

1. Unless otherwise agreed all prices apply ex works, and exclude packing and unloading. Value-added tax as determined by law will be added to the prices. Furthermore and in absence of a separate agreement, all prices are based on annual quantities and delivery volumes quoted in the offer. The Supplier reserves the right to modify the price if the Buyer's actual quantities or delivery volumes differ from those as stipulated in the offer.
2. Unless otherwise agreed, payment is to be made without deduction directly into the bank account of the Supplier as follows:
1/3 deposit upon Supplier's confirmation of Buyer's order,
1/3 as soon as the Buyer has been informed that the main parts are ready for delivery,
the rest to be paid within one month of the transfer of risk
3. The Buyer shall only have the right to retain payments or offset them against any counterclaims insofar as its counterclaims are undisputed or have become res judicata.

III. Delivery time, delay in delivery

1. The delivery time shall be as agreed between the Buyer and the Supplier. The Supplier's adherence to the delivery time presupposes that all commercial and technical questions between the parties have been clarified and that the Buyer has fulfilled all the necessary obligations e.g.

provision of the necessary official certification or permits or the payment of the deposit. Where this is not the case, the delivery time shall be reasonably extended. The foregoing does not apply if the Supplier is responsible for the delay.

2. The Supplier's adherence to the delivery time is subject to it receiving the correct supplies on time. The Supplier will inform the Buyer of any impending delays as soon as possible. If the Buyer's actual quantities differ from the agreed delivery intervals and delivery quantities, this may result in a longer delivery time.
3. The delivery time shall be deemed to have been observed if the delivery item has been dispatched from the factory or when the Buyer has been informed that the item is ready for delivery. If and insofar as delivery has to be taken, unless refusal to take delivery is justified, the date delivery has to be taken or alternatively the notice of readiness to take delivery shall be conclusive.
4. If the delivery of the item is taken at a date later than as agreed and the delay is attributable to the delay, any costs resulting therefrom shall be calculated commencing one month from the date of notice of the delivery or readiness to deliver.
5. If the delivery time cannot be complied with due to an act of God, industrial dispute or other force majeure, the delivery time shall be reasonably extended. The Supplier will inform the Buyer as soon as it is aware of the commencement or the end of said circumstances.
6. The Buyer can rescind the contract immediately without notice if the Supplier is unable to provide the goods and services completely before the transfer of risk. Moreover, the Buyer may rescind the contract if the execution of part of the delivery becomes impossible pursuant to an order and the Buyer has a justified reason for rejecting partial delivery. If however the rejection was unjustified, the Buyer is liable to pay the purchase price attributable to the partial delivery. The same shall apply in the case of the Supplier's inability to perform. In addition Section VII.2 applies.

In the event that the impossibility or inability occurs during the delay in Buyer's acceptance of delivery or when the Buyer is solely or largely responsible for the said circumstances, the Buyer is obliged to effect payment. If, unless statutory exceptions applies, the Buyer sets the Supplier a reasonable extension of time in which to perform and the deadline is not met the Buyer is entitled to rescind the contract. At the request of the Supplier the Buyer is required to state within a reasonable period of time whether it is rescinding contract as a result of the delay.

Further claims due to delayed delivery are exclusively based on section VII.2 of these terms and conditions.

IV. Transfer of risk, acceptance

1. The risk passes to the Buyer as soon as the goods leave the Supplier's plant even if and when partial deliveries are being made or when the Supplier has assumed other responsibilities, e.g. the transport cost or the delivery and installation. As far as acceptance must take place this is relevant for the transfer of risk. It must be carried out without undue delay as of the acceptance date, alternatively after the notification by the Supplier about the readiness for acceptance. The Buyer shall not refuse acceptance in the event of a minor defect.
2. In the event of delay or failure of the shipment or acceptance on grounds, for which the Supplier is not responsible the risk will be transferred to the Buyer from the day of notification of the shipment or readiness for acceptance on part of the Supplier. The Supplier is obliged to insure at cost to the Buyer the shipment upon the Buyer's request.
3. Partial deliveries are permissible to the extent deemed reasonably acceptable to the buyer.

V. Retention of title

1. The Supplier shall retain the title to the delivery item until all payments including ancillary payments under the contract have been made.
2. The Supplier shall be entitled to insure the delivery item against theft, breakage, fire, water and other damages at the Buyer's cost unless the Buyer can prove that it has itself taken out such insurance.
3. The Buyer shall neither sell, pledge nor offer as security the delivery item. The Buyer has to immediately inform the Supplier of any pledge, confiscation or other third party rights..
4. In the event of the Buyer's breach of contract and particularly in the case of a default in payment, the Supplier is entitled to re-possess the delivery item after the Buyer has been warned and the Buyer is obliged to hand over the delivery item for re-possession.
5. Due to the retention of title, the Supplier can only demand surrender of the delivery item if the Buyer has rescinded the contract.
6. The application to commence insolvency proceedings entitles the Supplier to rescind the contract and to demand the surrender of the delivery item.

VI. Claims for defects

Subject to section VII, in case of material defects and defects of title regarding the delivery the Supplier shall warrant by exclusion as follows:

Material defects

1. At the discretion of the Supplier all affected parts which has been proven to be defective before the transfer of risk shall be improved or replaced free of charge. The Buyer shall inform the Supplier in writing immediately of all such defects. Parts replaced shall become the property of the Supplier.
2. The Buyer shall upon consultation with the Supplier provide the Supplier with sufficient time and opportunity to undertake the necessary improvements or replacements failing which the Supplier is absolved from any liability resulting thereof. The Buyer shall only have the right to

repair the defect itself or through a third party and to claim compensation from the Supplier for the expenses incurred thereof when there is imminent danger to work safety or to avert disproportionate further damage and the Supplier has been informed of the same.

3. All expenses incurred as a result of the repair or replacement including the cost of the replacement item and its shipment shall be borne by the Supplier if the complaint proves to be justified. Furthermore, the Supplier shall bear the costs of the disassembly and installation as well as the costs of the necessary installation and support staff including transport costs as long as it does not impose an unreasonable burden on the Supplier.
4. In the framework of the statutory provisions and subject to statutory exceptions, the Buyer has a right the rescind the contract when the Supplier allows the reasonable amount of time provided for the repair or the replacement as a result of the material defect to elapse. If the defect is minor the Buyer is entitled to a reduction in the contractual price. In all other cases the right to reduce the contractual price is excluded.

Further claims are exclusively determined according to section VII.2 of these terms and conditions.

5. No liability will be assumed in the following cases: Unsuitable or improper usage, incorrect installation or operation by the Buyer or any third party, natural wear and tear, faulty or negligent treatment, inappropriate maintenance, unsuitable equipment, defective civil works, unsuitable construction ground, chemical, electrochemical or electrical influences; provided that the Supplier is not responsible for the same.

If the Buyer or a third party make improper subsequent improvements then the Supplier is not liable for the consequences arising therefrom. The same applies for all alterations to the delivery item undertaken without the prior consent of the Supplier

Defects in title

7. If in the course of utilisation of the delivery item any industrial property right or copyright has been infringed, the Supplier will at his own expense and to the extent it does not create any reasonable burden on the Buyer, procure such rights as to enable the Buyer to continue utilisation without infringement or modify the delivery item such that the infringement no longer exists.

The Buyer is entitled to rescind the contract if the removal of infringement is not possible on commercially reasonable terms or within a reasonable period of time. This Supplier can also exercise his right to rescind under the same conditions.

8. The obligations of the Supplier as defined in section VI.7 are final and subject to section VII.2, in the event of an infringement of industrial property rights or copyright.

The said obligations exists when

- the Buyer immediately inform the Supplier of any enforceable industrial property right or copyright infringement,
- the Buyer provides reasonable support to the Supplier to defend the enforceable claims or, as the case may be, to enable the Supplier to carry out modification measures pursuant to section VI.7,
- the Supplier reserves the right to defend any claim including any out-of-court settlement,
- the defect in title is not due to any instruction given by the Buyer, and
- the infringement is not caused by any alteration or utilisation made by the Buyer not in accordance with the contract.

VII. Supplier's liability, exclusion of liability

1. If the delivery item cannot be used as stipulated in the contract for reasons attributable to the Buyer as a result of negligent or incorrect execution of proposals and consulting that took place prior to the contract conclusion or due to a violation of other secondary obligations - in particular relating to the operations and maintenance manual for the delivery item, the regulations in Sections VI and VII.2 shall apply accordingly with the exclusion of further claims on part of the Buyer.
2. The Supplier is only liable for all damages not arising from the delivery item itself irrespective of legal grounds in the case of
 - a) wilful intent,
 - b) gross negligence of the owner/committees or company executives,
 - c) culpable injury to life, body and health,

- d) malicious concealment of defects,
- e) guarantee,
- f) defects in the delivery item insofar as there is liability for physical or material damage to objects used in the private sphere under the Product Liability Act.

In case of culpable breach of fundamental contractual obligations the Supplier is liable also in event of gross negligence of its non-executive employees and in the event of minor negligence, the latter limited to reasonably foreseeable damages typical in such contracts.

All other claims are excluded.

VIII. Statutory Limitation

All the claims of the Buyer, irrespective of legal grounds, will lapse after 12 months. Statutory limitations will apply to all claims for compensation under Section VII. 2 a – d. The same limitation applies for defects in a construction or delivery caused by its normal usage in a structure.

X. Governing law, Jurisdiction

1. The laws of the Federal Republic of Germany shall apply to all legal matters between the Supplier and the Buyer which is the law governing legal matters between domestic parties.
2. The place of the jurisdiction is Eschwege. The Supplier has the right however to file a lawsuit at the headquarters of the Buyer.