

**1. General:**

In the absence of any different express written agreement, these Terms and Conditions of Sale and Delivery shall constitute the legal basis of all current transactions between the buyer and PENGG. They shall also apply to all future orders of the buyer.

Any terms and conditions of the buyer to the contrary, printed or unprinted and in any form whatsoever, shall be valid only if they were expressly accepted by PENGG in writing. 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. The prices and other information provided in an offer shall be non-binding and only recommended prices.

If PENGG provides documents such as illustrations, drawings, indications of weight and measurements along with the offer, these shall only be roughly relevant, unless they are expressly referred to as binding. PENGG will reserve all property rights and copyrights to illustrations, drawings, calculations and other documents. This shall also cover written documents which are designated "confidential". The buyer may disclose such documents to third parties only with PENGG'S express written consent.

Third parties may not be informed of the contents of PENGG'S offer without the latter's express written consent.

The buyer shall be bound by his orders. If PENGG, although it was granted a reasonable grace period of at least 14 days by the buyer, does not send an order confirmation or make delivery within the term granted, the buyer shall no longer be bound by his order.

PENGG and the buyer shall be deemed to have concluded a contract if PENGG, after receipt of the buyer's order and customer-specific claims, if any, sent to the buyer a related written order confirmation or made delivery to the buyer. Subsequent cancellations, 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.

Initial samples are being conducted when required by the buyer and must be notified by the buyer.

Requalification inspections are being carried out based on comprehensive product audits per product group.

**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 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 the buyer accepts goods with delay,

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:**

Unless expressly referred to and agreed as fixed dates, delivery dates and deadlines shall be rough delivery periods. 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. PENGG may carry out and charge partial and pre-deliveries.

Compliance with agreed delivery dates and deadlines shall be valid 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, 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 the buyer accepts goods with delay 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".

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.

PENGG may set off payments made by the buyer against outstanding claims at its discretion. Incoming payments will generally be used to settle the earliest debts plus default interest accrued.

If periods for payment were agreed, all of PENGG'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 PENGG 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 bankruptcy, composition or enforcement proceedings against the buyer or if the buyer discontinues to make payment or if PENGG becomes aware of any circumstances which challenge the buyer's creditworthiness. In this event, PENGG 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 PENGG. In case of any default in payment, PENGG 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 8 % p.a. above the relevant base interest rate of the Austrian National Bank. The contract partner expressly approves that data have to be transmitted to the collection company and/or to lawyers (such as names, date of birth, address, dates on which reminders were issued).

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, PENGG 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 8 % 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, PENGG may rescind the contract

- a) if it has justified doubts as to the buyer's solvency and the buyer, upon PENGG'S request, does neither make advance payments nor provide a suitable security prior to the delivery;
- b) without granting a grace period, if bankruptcy or composition 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.

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

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

## 9. Retention of title:

PENGG 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 PENGG'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 PENGG'S property right and inform PENGG without delay.

As long as title is retained, the buyer shall insure the full invoiced value of the goods delivered by PENGG under the proviso of title retention against the usual risks and restrict the transferability of the insurance policies upon PENGG'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, PENGG 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 PENGG under the proviso of title retention may, in any event, not be assigned to third parties, but will be assigned by the buyer to PENGG 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 PENGG 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, PENGG 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 PENGG shall be deemed entrusted to the buyer in escrow for PENGG to the extent of the assignment, shall be held separately for and paid to PENGG without delay, irrespective of the terms of payment agreed with the interim buyer and/or PENGG.

PENGG 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 %. PENGG may choose the securities to be released at its discretion.

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

## 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.

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.

The buyer shall be entitled to a warranty claim only if the buyer gives detailed written notice to PENGG 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. All expenses and costs whatsoever PENGG may incur in connection with the removal of defects shall be borne by the buyer.

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 a retention of title.

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 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. PENGG shall not be obliged to pay damages to the buyer for any injuries of persons, for damage to goods which are not the subject-matter of the contract, for lost profits, for damage due to claims of third parties and for any other consequential damage whatsoever. These provisions shall not affect the provisions of the Product Liability Act.

#### 12. Data privacy:

The buyers expressly agree that PENGG may collect or process all master, traffic and content data of the buyers within the meaning of Section 87 of the Telecommunications Act (TKG), Federal Law Gazette I. No. 100/1997. These data will be processed and transmitted within the meaning of the statutory provisions of Sections 91 et seq. TKG 1997 and of the Data Privacy Act 2000 for purposes of providing PENGG'S contractual and related services, to the extent this is necessary to process customer relationships. 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. In addition, PENGG may transmit the data to companies which make deliveries and/or provide services within the scope of and/or in connection with PENGG'S performance of the contract. The buyer's master data will be deleted immediately after the end of the legal relationship, provided the data are no longer required to settle or collect compensations, to process complaints or to fulfill other statutory obligations. Traffic data will also be deleted or anonymized after the end of the relationship, provided they are no longer required to settle amounts or for statutory reasons. In this context, PENGG may in particular store the traffic data until the expiry of that time-limit within which the invoice may be challenged legally or a claim for payment may be asserted. PENGG shall not be obliged to submit proof of any deletion. PENGG may use the buyer's content data only where this is absolutely necessary within the scope of the contractual relationship. The contents of the messages transmitted by the buyer will not be examined as to lawfulness. Content data may also be stored if and when this is required for settlement.

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.

Pursuant to Section 101 TKG, the buyer agrees to be provided with electronic mail as mass mail and/or for advertising purposes.

#### 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.

Should parts of these Terms and Conditions for Sale and Delivery be or become invalid in whole or in part, this shall not affect the validity of the other terms.