

Terms and Conditions of Sale and Delivery

perma-tec GmbH & Co. KG | As of 01 January 2023

1. General

- 1.1. For our („perma-tec GmbH & Co. KG“) deliveries and services, the following General Terms and Conditions of Sale shall apply exclusively; we only accept General Terms and Conditions of the Customer that conflict with or deviate from our General Terms and Conditions of Sale to the extent that we have expressly agreed to them in writing. Even if we have not objected to them in individual cases, they shall have no effect.
- 1.2. The provision of Clause 1.1. shall also apply to all future transactions with the Customer.
- 1.3. Claims against us may not be assigned to third parties. § Section 354 a of the German Commercial Code (HGB) shall remain unaffected.
- 1.4. The Customer shall only be entitled to set-off if the asserted claims have been legally established, have been acknowledged by us or are undisputed. This also applies even if claims for defects or counterclaims are asserted. The Customer shall only be entitled to exercise a right of retention if the counterclaim is based on the same contractual relationship from which the Customer's payment obligation arises.
- 1.5. Any sale, resale and disposition of the supplies and services as well as any related technology or documentation may be subject to German, EU, US export control law and, if applicable, the export control law of other countries. By placing an order, the Customer agrees to comply with such laws and regulations. The Customer confirms to have obtained all necessary permits for export or import.

2. Offer / Scope of Delivery

- 2.1. Our offers are subject to change. The offers represent a non-binding invitation to the Customer to order supplies and services from us.
- 2.2. By sending the order to us, the Customer makes a binding offer to conclude a contract.
- 2.3. We may accept this offer within a period of 14 calendar days by sending an order confirmation or by sending the ordered goods or by commencing the provision of services. After fruitless expiry of this period, the offer shall be deemed as rejected.
- 2.4. Deviations from product specifications are permitted, provided that they are insignificant.
- 2.5. We reserve the property rights and copyrights to drafts, catalogues, advertising materials, illustrations, drawings, calculations and other documents. This shall also apply to such written documents which are specified as „confidential“. Prior to their transfer to third parties, the Customer is required to obtain our express written consent.

3. Information / Technical Support

We provide information and technical support to the best of our knowledge and based on our experience. However, all data and information on the suitability and application of our goods are non-binding and do not exempt the Customer from his own tests. Clauses 9. and 10. of these Terms and Conditions shall apply to any liability.

4. Prices

- 4.1. Unless otherwise stated in our order confirmation, our prices shall be „ex works“ (Incoterms 2020), excluding packaging, insurance, freight and, if applicable, minimum quantity surcharge. These items will be invoiced separately.
- 4.2. All prices are net prices without value added tax. VAT will be shown separately in the invoice at the statutory rate on the day of invoicing.
- 4.3. We reserve the right to change our prices accordingly if, after conclusion of the contract, cost reductions or cost increases occur, in particular as a result of collective wage agreements or changes in the price of raw materials and / or materials or changes in the price of operating materials required for the manufacture of the goods (including electricity, gas, etc.). Upon request, we will provide the Customer with such evidence. §§ 313, 315 (3) BGB shall apply accordingly. If the Customer cannot reasonably be expected to accept the goods as a result of the price change, he shall be entitled to withdraw from the contract. The mere reduction of a profit margin shall expressly not lead to the unreasonableness of performance of the contract.

5. Payments

- 5.1. Unless otherwise stated in the order confirmation, payments shall be due without deduction within 30 days of the invoice date (receipt of payment by us). A 2 % discount shall be granted for payments made within 8 days of the invoice date. In the event of default in payment, the provisions of Clause 5.2. shall apply as well as, in addition thereto, the statutory provisions regarding default in payment.
- 5.2. Bills of exchange and checks shall only be considered as payment after they have been cashed and shall be accepted without any obligation to present and protest them in due time and only upon special written agreement and subject to the charging of all

collection and discount fees.

- 5.3. In the event of default in payment or if our claims are jeopardized by deterioration of the Customer's creditworthiness, we shall be entitled to call in our claims arising from the business relationship with the Customer. In this case, we are also entitled to make outstanding deliveries only against advance payment or against provision of securities. If the Customer is not able to provide securities within a reasonable period of time after setting a deadline with the threat of withdrawing from the contract, if necessary, we shall have the right to withdraw from the contract. Further claims shall remain unaffected.
- 5.4. We shall be entitled to charge interest on arrears at a rate of 9 percentage points p. a. above the prime rate of the ECB as applicable from the time of default. However, this shall not affect the possibility of claiming higher actual damages.

6. Delivery and Delivery Time

- 6.1. Unless otherwise expressly agreed, we shall deliver „ex works“ (Incoterms 2020), exclusive of packaging and insurance, freight and, if applicable, minimum quantity surcharge.
- 6.2. Delivery dates and delivery periods, which may be agreed upon as binding or non-binding, shall be stated in writing and shall only be agreed upon with the reservation of correct and timely self-delivery (inter alia disruptions of the supply chain - transport, intermediaries) by our suppliers beyond our control.
- 6.3. The agreed delivery / service period shall be deemed to have been complied with if the delivery item is ready for collection at the factory or warehouse by the time it expires or we have at least made an oral offer to provide our service.
- 6.4. Unforeseeable, extraordinary circumstances independent of our will (force majeure) which have a significant, unavoidable influence on the fulfillment of the contractual obligation such as e. g. fire, floods, storms, explosions, natural disasters, war, sabotage, labor disputes (including lockouts and strikes), governmental actions and orders (whether valid or invalid), cyber-crime by third parties, pandemic / epidemic, shortages of raw materials and energy, traffic and unavoidable operational disruptions, orders of higher authorities - also insofar as they make the performance of the affected business sustainably uneconomical for the foreseeable future - as well as all other cases of force majeure, also at our suppliers, shall release us from the obligation to deliver for the duration of the disruption and to the extent of its effects. Such events entitle us to withdraw from the contract in whole or in part without the buyer having a right to compensation.
- 6.5. Partial deliveries / services are permissible and are to be paid for in accordance with the conditions, insofar as they are reasonable for the Customer.

7. Transfer of Risk and Acceptance in Case of Shipment, Default of Acceptance

- 7.1. The collection / acceptance of the goods / services by the customer shall take place immediately after the goods have been made available in the factory or warehouse or after an oral offer of the service has been made.
- 7.2. If the goods are shipped to the Customer at the Customer's request, the risk of accidental loss or accidental deterioration of the goods shall pass to the Customer upon dispatch of the goods, at the latest upon leaving the factory or warehouse. This applies regardless of who pays the freight costs. Unless otherwise agreed in writing, delivery in this case shall be free curbside. The Customer guarantees free access to the unloading point. Additional costs for transport due to non-fulfillment of the Customer's obligations shall be borne by the Customer. Any complaints due to transport damage must be made by the Customer directly to the transport company within the special deadlines provided for this purpose. The buyer is responsible for taking out transport and other insurances. If the shipment of the delivery is delayed because of reasons attributable to the Customer, the risk of accidental deterioration and accidental loss shall pass to the Customer upon notification of readiness for shipment. Storage costs after transfer of risk shall be borne by the Customer. Further claims shall remain unaffected. If the Customer is in default of acceptance, we shall be entitled to demand reimbursement of the incurred expenses; the risk of accidental deterioration and accidental loss shall pass to the Customer upon default of acceptance. In this case, the Customer shall be in default of acceptance if he has not accepted the goods within two weeks after notification of readiness for dispatch.
- 7.3. If the Customer is in default of acceptance, we shall be entitled to claim compensation for the incurred expenses / damages; the risk of accidental deterioration and accidental loss shall pass to the Customer upon occurrence of the default of acceptance.
- 7.4. Subject to proof of a different amount of damage, we shall be entitled to demand 10 % of the net invoice amount as compensation. As costs of storage for goods not accepted on time, the Customer shall be charged 0.5 % of the net invoice amount per month as damages from the first month following the notification of readiness for shipment.
- 7.5. Goods / services are to be accepted by the Customer, even if they have insignificant defects, without prejudice to the rights under Clause 9. of these Terms and Conditions.

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8. Retention of Title

- 8.1. The delivery items / goods shall remain our property (reserved goods) until all claims, irrespective of their legal basis, arising from the legal relationship underlying the delivery have been satisfied.
- 8.2. In the event of processing, combination and mixing of the reserved goods with other goods by the Customer, we shall be entitled to co-ownership of the new item in the ratio of the invoice value of the reserved goods to the value of the other goods used. If our ownership expires as a result of processing, combining or mixing, the Customer shall already now transfer to us the ownership rights to which it is entitled in the new stock or item to the extent of the value of the goods subject to retention of title and shall hold them in safe custody for us free of charge. The co-ownership rights arising hereunder shall be deemed to be reserved goods within the meaning of Clause 8.1.
- 8.3. The Customer shall only be entitled to further processing of the reserved goods, to combine and mix them with other items or to resell them in the ordinary course of business and as long as he is not in default. Any other disposal of the reserved goods is not allowed. We must be notified immediately of any seizure or other access to the reserved goods by third parties. All intervention costs shall be borne by the Customer in case they cannot be collected from the third party. If the Customer defers the purchase price to his buyer, he shall reserve title to the reserved goods against the latter under the same conditions under which we reserved title upon delivery of the reserved goods. Otherwise, the Customer shall not be authorized to resell the goods.
- 8.4. The Customer hereby assigns to us its claims arising from the resale of the goods subject to retention of title. They shall serve as security to the same extent as the reserved goods. The Customer shall only be entitled and authorized to resell the goods if it is ensured that the corresponding claims are transferred to us.
- 8.5. If the Customer sells the reserved goods together with other goods not supplied by us at a total price, the assignment of the claim from the sale shall be made in the amount of the invoice value of our respective reserved goods sold.
- 8.6. The Customer shall be authorized to collect the claims assigned to us until revoked by us. We shall be entitled to revoke this authorization if the Customer fails to meet its payment obligations arising from the business relationship with us in due time. Provided that the prerequisites for exercising the right of revocation are given, the Customer shall, upon our request, immediately disclose to us the assigned claims and their debtors, disclose all information necessary for the collection of the claims, hand over the relevant documents and notify the debtor of the assignment. We shall also be entitled to notify the debtor of the assignment ourselves.
- 8.7. If the value of the securities existing for us exceeds the secured claims by more than 30 % in total, we shall be obliged to release securities of our choice to this extent at the Customer's request.
- 8.8. If we assert the reservation of title, this shall only be deemed to be a withdrawal from the contract if we expressly declare this in writing. The customer's right to possess the reserved goods shall expire if he fails to fulfill his obligations under the legal relationship underlying the delivery.

9. Warranty, Material Defects

- 9.1. The Customer's warranty claims in the event of defects shall be governed by the statutory provisions within the statutory periods, unless deviations result from the following provisions.
- 9.2. The applicability of § 439 (2) and (3) BGB and §§ 445a and 445b BGB is excluded; this shall not apply insofar as a defect in performance by us becomes the subject of a warranty claim by a consumer downstream in the supply chain, either in whole or in part. In any case, § 377 HGB shall apply.
- 9.3. If new delivery items are purchased, the Customer's warranty claims in the event of defects shall expire one year after receipt of the delivery items.
- 9.4. If used delivery items are purchased, the Customer's warranty claims shall be excluded. Warranty claims are also excluded insofar as they are based on the fact that
 - a) the goods have been improperly handled or overused, or
 - b) the goods have previously been improperly repaired, maintained or serviced in an operation not directly recognized by us for servicing and the Customer should have recognized this, or
 - c) parts have been installed in the goods whose use we have not directly approved, or
 - d) the goods have been modified in a manner not directly approved by us, or
 - e) the Customer has not complied with the instructions for handling, maintenance and care of the goods [e. g. operating instructions].
- 9.5. The limitation period of one year or the exclusion of warranty shall not apply if the obligation to pay compensation is based on bodily injury or damage to health due to a defect for which we are responsible or on intentional conduct or gross negligence or its

vicarious agents. Notwithstanding the foregoing, we shall be liable under the [German] Product Liability Act without any deviation from the statutory provisions therein.

- 9.6. The warranty shall not apply if the Customer modifies the delivery items without our consent, has them modified by third parties or uses them improperly and the remedy of defects is thereby becomes impossible or unreasonably difficult. In any case, the Customer shall bear the additional costs of remedying the defect resulting from the modification.
- 9.7. The Customer shall be obliged to inspect the delivery item / service for any defects upon handover and to notify us of such defects in writing without undue delay. The relevant regulations and legal consequences of the German Commercial Code (HGB) shall apply accordingly.
- 9.8. If a notice of defect proves to be unjustified, the Customer is obliged to compensate us for all expenses incurred by us as a result of such notice of defect.

10. Liability in Tort

- 10.1. Our liability for damages, irrespective of the legal grounds, in particular due to impossibility, delay, defective or incorrect delivery, breach of contract, breach of duties during contractual negotiations and tort, shall be limited in accordance with this Clause 10., insofar as fault is involved in each case.
- 10.2. We shall not be liable in the event of ordinary negligence, unless it is a breach of substantial contractual obligations. Substantial contractual obligations are those obligations which grant the contracting parties the right which the contract is intended to grant according to its content and purpose, in particular those obligations whose fulfillment is essential for the proper performance of the contract and on whose fulfillment the contracting party regularly relies and may rely.
- 10.3. Insofar as we are liable for damages on the merits in accordance with Clause 10.2., this liability shall be limited to damages which we foresaw as a possible consequence of a breach of contract at the time of conclusion of the contract or which we should have foreseen by exercising due care. Indirect damage and consequential damage resulting from defects in the delivered goods shall also only be compensable insofar as such damage is typically to be expected when the goods are used for their intended purpose.
- 10.4. In the event of liability for simple negligence, our liability for property damage and further financial losses resulting from this shall be limited to an amount of EUR 50,000 per case of damage (corresponding to the current coverage amount of our product liability insurance or liability insurance), even if a breach of material contractual obligations is involved.
- 10.5. The above exclusions and limitations of liability shall apply to the same extent in favor of our corporate bodies, legal representatives, employees and other vicarious agents.
- 10.6. Insofar as we provide technical support or consulting services and this support or advice is not part of the contractually agreed scope of services owed by us, this shall be done free of charge and to the exclusion of any liability.
- 10.7. The limitations of this Clause 10. shall not apply to our liability for intentional and grossly negligent conduct, for guaranteed characteristics of state, for injury to life, body or health or under the [German] Product Liability Act.

11. Data Processing and Miscellaneous

- 11.1. We store and transmit the order-related personal data of the customer exclusively for the processing and handling of his order (Art. 6 GDPR). In accordance with the provisions of the GDPR, the Federal Data Protection Act and the [German] Telemedia Act (TMG), we undertake to provide comprehensive protection of the Customer's personal data.
- 11.2. We are not willing to participate in a dispute resolution procedure [§§ 36, 37 VSBG [German Consumer Dispute Settlement Act]].
- 11.3. The substantive law of the Federal Republic of Germany shall apply; the applicability of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.
- 11.4. Unless otherwise stated in the order confirmation, our registered office in Euerdorf shall be the place of performance.
- 11.5. If the Customer is a merchant, a legal entity under public law or a special fund under public law, Schweinfurt shall be the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship. The same shall apply if the Customer has its registered office abroad. However, we are also entitled to sue the Customer at his place of business.