

General conditions of sale and delivery A-PF Solutions

1. Preliminary remarks

The following conditions apply to all our sales and deliveries including subsequent orders. Conditions of our business associates shall not be accepted even if we do not expressly object to these. Should a part of our conditions be or become invalid, this shall not affect the validity of the remaining conditions.

2. Offers and orders

2.1 Our offers are subject to change without notice. We shall be bound by offers only once we have accepted orders in writing. The documents belonging to the offer, such as illustrations, drawings, weights and measurements shall only be deemed to be approximate. Technical alterations and modifications to the form, colour and/or weight are reserved as far as reasonable. We retain rights of ownership and copy right to cost estimates, descriptions, drawings and other documents. They may not be made accessible to third parties.

2.2 We may accept orders within 7 workdays after receipt of the purchase order. During this period the buyer shall remain bound to its purchase order. Orders are accepted by means of a separate declaration to this effect, the mere confirmation of receipt of a purchase order does not signify the acceptance of the order. Upon dispatch of the goods the order is deemed to be accepted.

2.3 The contents of our obligation are shown solely in the text of our order acceptance. Additional agreements or verbal assurances are binding only if they have been repeated in such acceptance.

2.4 Unless otherwise agreed, our performance obligation applies with the reservation that we receive supplies correctly and in due time from any sub-suppliers.

3. Prices and payment

3.1 All prices stated by us are applicable excluding value added tax and any other public duties.

3.2 Our prices are applicable ex works, excluding transport and packaging.

3.3 Unless otherwise agreed, payment shall be made within 30 days net after the date of the invoice or within 14 days after the date of the invoice by deducting 1,5 % discount with prior agreement. In the event of delayed payment the buyer shall owe interest at 8 percentage points above the basic interest rate as well as other damage for default over and above this. The date of payment is the date on which the amount is credited unconditionally to our bank account.

3.4 The buyer may only exercise a right of retention for counterclaims under the same order. Set-off is only permitted with an uncontested claim or a claim recognised by declaratory judgement.

3.5 We reserve the right to decide whether to accept bills and cheques in each individual case. At all events such discounting is effected only on account of performance.

3.6 In the event of payment default we may demand damages for nonperformance after setting an additional period of 2 weeks. All claims, even those for which a respite has been granted, become immediately due and payable in the event of payment default. Non-compliance with our terms of payment releases us from any further duty under the contract, particularly any further duty to deliver.

3.7 Should the creditworthiness of a buyer or a jointly obligated party diminish, we are entitled to demand the immediate payment of all claims, to take back goods already delivered as security and to make future deliveries dependent on the prior payment of the entire purchase price. Negative information provided by a respected credit agency applies as proof of creditworthiness, in which connection it suffices if a lawyer or a notary confirms the existence of such information on our behalf.

4. Delivery time

4.1 Agreed delivery periods commence at the earliest upon posting the acceptance of the order and after the provision of all the documents, approvals, releases to be procured by the buyer and the receipt of any down payment agreed.

4.2 The delivery period has been observed if, before the expiry thereof, the delivery item has left the works or notification has been given of readiness for dispatch.

4.3 In the event of a delay in delivery we shall be granted a reasonable additional period of usually 8 weeks. After the expiry of the reasonable additional period the buyer is entitled to withdraw from the contract; it shall have claims for damages only if and insofar as the delay in delivery and the expiry of the additional period in vain is based on the wilful intent or gross negligence of the supplier.

4.4 Circumstances for which the supplier is not responsible and which render the execution of accepted orders impossible, or delay, significantly complicate or make such execution economically unreasonable, e.g. force majeure, state of emergency, official orders, strikes and lockouts, traffic breakdowns, unforeseen material defects or similar circumstances, also for sub-suppliers, entitle the supplier, to the exclusion of a claim for damages on the part of the buyer, to delay delivery for the duration of the impediment or to withdraw from the contract. The supplier shall notify the buyer of such circumstances without delay. The buyer may demand that the supplier declares within two weeks whether it will withdraw from the contract or effect delivery within a reasonable additional period. If the supplier fails to make such a declaration, the buyer may withdraw from the part of the contract not yet performed.

4.5 If the buyer does not fulfil its obligation to accept delivery in due time, it shall be charged the costs incurred for storage commencing one month after notification of the readiness for dispatch, however at least 0.5% of the invoice sum per month. Irrespective thereof, the supplier is also entitled to dispose of the delivery item otherwise after the setting and the expiry in vain of a reasonable period and to effect delivery to the buyer later with a reasonably extended period.

5. Passing of the risk and receipt

5.1 The risk passes to the buyer upon the dispatch of the parts delivered, even if the supplier has assumed the transport costs or assembly. Upon request by the buyer, insurance may be taken out for insurable risks at the buyer's expense.

5.2 If the buyer delays the receipt of the goods, the risk passes to the buyer on the date on which notification is given of the readiness for dispatch.

5.3 Part deliveries are permitted.

5.4 The buyer shall accept receipt of delivered items even in the event of a notification of defects irrespective of claims based on a defect of quality.

6. Reservation of ownership

6.1 Delivered goods remain the property of the supplier until payment in full of all claims arising under the business relationship. Payment has been made only after its unconditional credit to the supplier's account.

6.2 The buyer is entitled to resell, to further process and to incorporate the reserved goods in the customary course of business subject to revocation at any time. This entitlement ends upon the revocation of the supplier, which is permitted at any time.

6.3 Should reserved goods be processed or incorporated to form a new moveable thing by the buyer, the processing is effected on behalf of the supplier without the latter being bound thereby. Upon the processing or incorporation of the reserved goods into goods not belonging to the supplier, the supplier acquires co-ownership of the new thing in relation to the value of the reserved goods to the total value.

6.4 The buyer hereby assigns the claim under the resale of the reserved goods with all ancillary rights to the supplier. In the event of processing or incorporation, the buyer assigns the delivery claim to the supplier in due proportion to the value of the reserved goods. The supplier accepts the assignments above.

6.5 The buyer is entitled to collect the claims assigned in the ordinary course of business until revocation by the supplier, which is permitted at any time. The buyer is obliged to provide information at any time about the existence and the extent of, and all of the details on, the claims assigned, also by sending written lists.

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6.6 The buyer shall store the reserved goods free of charge on behalf of the supplier and shall insure them against customary risks to the customary extent at its own expense. Rights to claims payment against the insurance relating to the reserved goods are hereby now assigned to the supplier who accepts such assignment.

6.7 Should the value of the security provided for the supplier exceed the supplier's claims by more than 10% in total, the supplier shall declare the release thereof in due proportion upon demand, in which connection it retains the right of decision over the security to be released.

7. Warranty, liability for defects

7.1 The buyer is obliged to duly inspect the delivery items at the time when the goods are received and to thereby give notification of any identified or identifiable defects in writing without delay. Hidden defects and defects unable to be identified during the incoming goods inspection shall be notified after discovery without delay. After infringing the duty of inspection and the duty to notify defects, warranty claims are excluded.

7.2 The warranty granted by the supplier relates and is restricted to the faultlessness of the delivered item at the time of delivery. Future wear and tear through use as intended or wear and tear or damage through improper use or insufficient care and maintenance do not constitute a claim under the warranty.

7.3 No warranty is assumed particularly in the following cases:

- unsuitable or improper use,
- faulty assembly and/or commissioning through the buyer or third parties,
- natural wear and tear,
- faulty or negligent treatment,
- improper maintenance,
- unsuitable operating material,
- faulty building work,
- unsuitable building ground,
- chemical, electrochemical or electric influences – unless the supplier is responsible for them or the supplier has guaranteed resistance against these influences.

7.4 If we repair damaged parts or carry out any other work on parts, we shall only grant a warranty for the processed or exchanged components and not for the other parts of the workpiece.

7.5 The warranty period amounts to one year after delivery of the goods or the repaired or processed workpiece.

7.6 For defects in the goods the supplier shall perform under the warranty either through subsequent improvement or through the delivery of a replacement at its option. Replaced parts shall become the property of the supplier. The buyer shall give the supplier the time and the opportunity to effect subsequent improvement and to deliver a replacement. The buyer has the right to eliminate the fault itself or have it eliminated by third parties and to demand the reimbursement of the necessary expenditure from the supplier only in urgent cases when operational safety is endangered or to prevent excessively large damage, in which connection the supplier must be notified thereof immediately.

7.7 If the supplier allows a reasonable period set for it for the subsequent improvement or replacement delivery to pass by in vain or if subsequent performance has finally failed, the buyer has a right to withdraw from the contract in accordance with statutory provisions. A claim for damages is excluded subject to item 8 of these conditions. In the event of insignificant defects the buyer merely has the right to reduce the contract price.

7.8 If the buyer or a third party effects subsequent improvement without authority or improperly, the supplier is not liable for the consequences resulting therefrom or for the future faultlessness of the delivery item. The same applies to an alteration to the delivery item effected without the prior approval of the supplier.

7.9 Should the buyer receive faulty assembly instructions, the supplier is merely obliged to subsequently supply faultless assembly instructions or to rectify the faults in the assembly instructions.

7.10 Only those characteristics are guaranteed which the supplier expressly referred to as warranted characteristics in the acceptance of the order. As a basic principle, only the manufacturer's product description mentioned in the contract is applicable as quality. Public comments, acclamation or advertising statements by the manufacturer do not constitute a contractual quality description.

8. Exclusion of claims for damages and general limitations of liability

8.1 In all cases in which we are obliged to pay damages or reimburse expenses on the basis of mandatory and non-alterable legal bases for claims, these obligations remain unaffected. We shall be liable only insofar as we, our executive employees and vicarious agents are guilty of wilful intent, gross negligence or death or injury or an impairment to the health of another.

8.2 Liability regardless of fault under the Product Liability Act and liability for performance under a warranty as to quality remains unaffected.

8.3 Liability for the culpable breach of essential contractual duties also remains unaffected. However, liability is limited to foreseeable damage typical for the contract except in the cases set out under item 8.1.

8.4 The regulations above do not entail a change in the burden of proof to the detriment of the buyer.

8.5 Unless liability ensues from item 8.1 to 8.4, we shall not be obliged to pay damages, particularly not for damage which was not caused to the delivery item itself.

9. Confidentiality

All the documents provided to the Customer, e.g. models, samples, drawings and information sheets remain our property. All the documents handed over shall be treated as confidential. The Customer expressly undertakes not to make copies or make them accessible to third parties. We may demand the return thereof at any time. All other information provided to the Customer in connection with the placing and execution of the order regarding the number of units, prices etc. and other knowledge received on all our company affairs shall be treated as confidential by the Customer and kept secret even after the termination of the business relations.

10. Operational safety

10.1 The buyer undertakes to comply with the operating instructions and safety notices supplied with the delivery item and to instruct its personnel so that safe operation of the delivery items is ensured. The buyer is obliged to confirm the receipt of instruction manuals and safety notices. Should such instructions not have been supplied with the delivery, it must notify the supplier thereof without delay.

10.2 Existing safety devices and danger notices on the products supplied may not be removed. Poorly affixed or defective ones shall be immediately reaffixed or replaced. The supplier hereby undertakes to replace safety notices which have become useless at any time and at a reasonable quantity. The buyer must accept receipt of, and comply with, any improvements to safety instructions at any time upon demand by the supplier.

10.3 Technical alterations to products delivered, particularly if they impair the safety of the operating personnel, may only be carried out with the written consent of the supplier. If there is no such consent, they shall be immediately removed again.

10.4 The buyer is obliged to notify the supplier in writing without delay if an accident has happened with the delivery item or it is discovered that a danger is entailed in the operation of the delivery item.

10.5 If the buyer fails to meet any one of the above obligations to ensure operational safety, it is obliged to indemnify the supplier from all obligations to pay damages arising therefrom as against third parties.

11. Jurisdiction and applicable law

11.1 In case of any and all disputes arising under or in connection with the contractual relationship, the courts in Nivelles, Belgium, shall have jurisdiction and venue.

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