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General Terms and Conditions of Purchase of Pfeifer und Seibel GmbH

I. Scope, form

1. These General Terms and Conditions of Purchase shall apply to all business relationships with our business partners and suppliers (“Sellers”). The General Terms and Conditions of Purchase shall only apply if the Seller is a company (Section 14 German Civil Code (Bürgerliches Gesetzbuch – BGB)), legal entity under public law or special trust under public law.
2. The General Terms and Conditions of Purchase shall particularly apply to any contracts on the sale and/or the delivery of movable items (“goods”) regardless of whether the Seller has produced the goods itself or purchased them from suppliers (Sections 433, 650 BGB). Unless otherwise agreed, the General Terms and Conditions of Purchase shall apply in the version effective at the time the Buyer places the order or, in any case, in the version last provided to the Seller as a framework agreement even for similar future agreements without us having to refer to this fact in each individual case.
3. These General Terms and Conditions of Purchase shall apply exclusively. Deviating, contrary or additional General Terms and Conditions of the Seller shall only form part of the agreement if explicitly approved by us in writing. This consent requirement shall apply in any case, for example, even if the Seller refers to its GTC in the order confirmation and we do not expressly object to this.
4. Individual agreements (e.g. framework supply agreements, quality assurance agreements) and specifications in our order take precedence over the General Terms and Conditions of Purchase. In case of doubt, trade terms shall be interpreted in accordance with the Incoterms® issued by the International Chamber of Commerce in Paris (ICC) in the version valid at the time the contract is concluded.
5. Legally relevant declarations and notifications by the Seller relating to the contract (e.g. setting of time limits, reminders, withdrawal) shall be made in writing. Writing within the meaning of these General Terms and Conditions of Purchase includes written and text form (e.g. letter, email). Legal form requirements and other proof, particularly in case of any doubt about the legitimation of the declaring party, shall not be affected.
6. References to the applicability of legal provisions shall only serve for clarifying purposes. Even without such clarification, the legal provisions therefore shall apply, unless they are directly amended in these General Terms and Conditions of Purchase or are explicitly excluded.



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II. Conclusion of the contract

1. Our order shall be classed as binding at the earliest upon written submission or confirmation. The Seller shall notify us of any obvious errors (such as typos and incorrect calculations) and incomplete information contained in the order, including order documentation, so that these can be corrected and/or completed prior to approval. Failure to do so shall result in the contract being deemed to not have been concluded.
2. The Seller is required to confirm our order in writing within a period of 7 weekdays or to complete it without reservation, notably by sending the goods (acceptance). Confirmation must be communicated immediately in this case.
3. Delayed acceptance is considered as a new offer and requires acceptance by us.
4. The transfer or subcontracting of our orders or essential parts thereof to third parties requires our prior written consent.

III. Delivery times and delays in delivery

1. The delivery periods stated by us in the order shall be binding. If the delivery period is not stated in the order and has not been otherwise agreed, it shall be 5 working days from conclusion of the contract. The Seller shall notify us immediately and in writing if it looks apparent that an agreed delivery period cannot be complied with, for whatever reason.
2. If the Seller fails to provide its services or does so outside the agreed delivery periods or if the Seller is delayed, our rights, particularly those regarding withdrawal and compensation, shall be based on the legal provisions. This shall not affect the provisions in Para. 3.
3. In the event the Seller defaults on a delivery, we may – in addition to further legal claims – demand flat-rate compensation for damage caused by delay to the amount of 1% of the net price per completed calendar week but not more than a total of 5% of the net price of the goods delivered late. We may provide proof that the damage incurred is bigger. The Seller may provide proof that no, or significantly less, damage has been incurred.
4. We are not obliged to accept partial and/or advance deliveries or partial and/or advance performance.



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IV. Performance, delivery, risk transfer and default in taking delivery

1. The Seller shall not engage third parties (such as subcontractors) to perform the services due to us without our prior written consent. The Seller shall carry the procurement risk for its services, unless agreed otherwise in individual cases (e.g. limited to inventories).
2. Delivery in Germany shall be free to the delivery address specified in the order (place of fulfilment). If no place of destination has been named and unless otherwise agreed, the delivery shall be made to our head office in Breidenbach, Germany. The respective delivery address shall also be the place of fulfilment for deliveries and any supplementary performance (obligation to fulfil).
3. Deliveries shall include a delivery note, including date (issuance and dispatch), content of delivery (item number and quantity) and our order number (date and number). We shall not be held responsible for any delays in processing and payment resulting from failure to include a delivery note or incomplete delivery notes. The Seller shall provide us with a corresponding dispatch notice containing the same content as the delivery note, which shall be sent separately to the delivery note.
4. The risk of accidental destruction and deterioration of the goods shall be transferred to us upon transfer of the goods at the place of fulfilment. If an acceptance of the goods has been agreed, this shall be the date on which the risk is transferred. The legal provisions of the law applicable to contracts for works and services shall further apply correspondingly in the event of an acceptance of goods. Our default in taking delivery shall be equivalent to delivery or acceptance.
5. The legal provisions shall apply in the event that we default in taking delivery. However, the Seller shall explicitly offer us its services even if a specific or determinable calendar period has been agreed for an action or cooperation on our part (such as provision of materials). If we default in taking delivery, the Seller may claim compensation for any additional costs incurred in accordance with statutory provisions (Section 304 BGB). In the event of the contract relating to an untenable item to be manufactured by the Seller (one-off production), the Seller only shall have further rights if we have agreed to cooperate and have violated this obligation.
6. In cases of force majeure and other unforeseeable, unavoidable and serious incidents that occur within our area of risks and for which we are not responsible and that make it considerably more difficult or impossible for us to fulfil our acceptance obligation – such as any kind of operational interruptions, strikes, lawful lockouts – release us from any obligation from the contract; however, obstacles of a temporary nature only for the duration of the obstruction. We shall not bear any additional costs incurred as a result of the delays.



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V. Prices, payment terms, set-off, retention and assignment

1. The price stated in the order shall be binding. All prices include statutory VAT, unless this is stated separately.
2. Unless otherwise agreed in individual cases, the price shall include all services and ancillary services of the Seller (such as assembly and installation) as well as all ancillary costs (such as proper packaging, insurance and transport costs). Deviations, such as special complications or delivery/service provision on Sundays and public holidays, which result in higher remuneration, must be agreed separately and expressly before acceptance of the order.
3. The agreed price shall be payable within 60 calendar days from complete delivery and provision of services (including any acceptance of goods/services agreed) as well as receipt of a properly prepared invoice. The seller shall apply a 3% discount on the net invoice amount for any payments made by us within 30 calendar days. For bank transfers, payment is deemed to have been made on time if the bank receives our transfer order before the payment deadline. We shall not be liable for any payment delays caused by the banks involved in the payment process.
4. We shall not be liable to pay regular interest payable on due date. The legal provisions shall apply in the event of payment default.
5. We shall have the right of set-off, retention and appeal against non-fulfilment of contract within the scope specified by law. We may, in particular, retain payments due as long as we are still entitled to claim compensation for incomplete or deficient services from the Seller.
6. The Seller shall only have the right of set-off or retention on the grounds of legally binding or undisputed counterclaims.
7. Where legally permissible, the Seller requires our prior written consent for the assignment of claims against us. Section 354a HGB remains unaffected. In any case, we shall be entitled, even after notification of an assignment, to make payment to the Seller with the effect of discharging the debt or to set-off with counterclaims.

VI. Information and due diligence obligations

1. If the Seller has been informed of the intended purpose of the delivery or service or if the intended purpose is evident to the Seller even without explicit reference, the Seller shall be obliged to inform us immediately if the delivery or service of the Seller is not suitable to fulfil this purpose.
2. The Seller shall immediately inform us in writing of any changes in the type of composition of the processed material or the constructive design compared to any similar services or deliveries previously provided.



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VII. Confidentiality and retention of title

1. We shall reserve the intellectual property rights and copyright in all images, plans, drawings, calculations, work instructions, product descriptions and other documents. Such documents shall be used exclusively for the contractually agreed services and returned to us upon completion of the contract. The documents shall not be disclosed to third parties, even once the contract has expired. This non-disclosure obligation shall only expire if and insofar as the knowledge contained in the transferred documents has become public knowledge. Special non-disclosure agreements and statutory regulations on the protection of confidential information shall remain unaffected.
2. The provision above shall apply accordingly to substances and materials (such as software, finished and semi-finished products) as well as tools, templates, samples and other items that we provide to the Seller for manufacture. Unless processed otherwise, the Seller shall store such items separately and at its own cost and insure them adequately against destruction and loss.
3. The Seller shall process, mix or combine (further processing) provided items for us. The same shall apply if the goods supplied are processed further by us, meaning that we are classed as the manufacturer and acquire the title to the products no later than upon further processing in accordance with legal provisions.
4. The title of the goods shall be transferred to us without exception and regardless of payment being made. However, in the special event of us accepting an offer made by the Seller to transfer the title on the basis of a purchase price payment being made, the Seller's retention of title shall expire no later than upon purchase price payment for the goods delivered. During the proper course of business, we shall retain the right to sell on the goods even before the purchase price payment has been made and whilst assigning the resulting receivable in advance (simple retention of title extended to include the selling-on of the goods shall apply for the purpose of simplification). In any case, this shall exclude all other forms of retention of title, particularly any retention of title that has been extended, assigned and extended to include further processing.

VIII. Defective delivery

1. The legal provisions and following supplements and clarifications shall apply exclusively in our favour regarding our rights in the event of physically and legally defective goods (including incorrect and short deliveries as well as improper assembly/installation or inadequate instructions) and other violations of duty by the Seller.



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2. In accordance with legal provisions, the Seller shall be liable, in particular, to ensure that the goods have the agreed properties upon the transfer of risk relating to the goods. In any case, product descriptions that are the object of the respective agreement, particularly by being stated or referred to in our order, or which have been included in the agreement in the same manner as these General Terms and Conditions of Purchase, shall be deemed to be an agreement on the properties of the goods. It shall make no difference if the product description originates from us, the Seller or manufacturer.
3. In the case of goods with digital elements or other digital content, the Seller shall owe the provision and updating of the digital content at least if this is the result of a quality agreement in accordance with Para. 2 or other product descriptions provided by the manufacturer or on its behalf, in particular on the internet, in advertising or on the goods label.
4. We shall not be obliged to inspect the goods or make special enquiries about any defects upon conclusion of the contract. Partly notwithstanding the provisions in Section 442, Para. 1, Sentence 2 BGB, we shall, therefore, be entitled to claims for defects without limitation even if we did not become aware of the defect upon conclusion of the contract due to gross negligence.
5. Statutory provisions (Sections 377, 381 German Commercial Code – HGB) shall apply to the commercial obligation to inspection and give notice of defects with the following stipulation: Our inspection obligation shall be limited to defects apparent during our incoming goods inspection when goods are visually inspected from the outside, including their delivery documentation (e.g. transport damage, incorrect or short deliveries) or which become apparent during our random quality checks. There shall be no inspection obligation if the acceptance of goods has been agreed. Besides, it shall depend on the actual benefit of an inspection, taking into account individual circumstances in accordance with diligent commercial judgement. This shall not affect our notification obligation about defects uncovered in the future. Notwithstanding our inspection obligation, our complaint (notification of defect) shall be deemed to have been made immediately and in good time if sent off within 10 working days from discovery of defect and/or from delivery in the case of obvious defects.
6. Supplementary performance shall also include the removal of the defective goods and their reinstallation if the goods have been installed in another item or attached to another item in accordance with their type and intended use before the defect became apparent; our statutory claim to reimbursement of the corresponding expenses (dismantling and installation costs) remains unaffected. The Seller shall also pay for any expenses necessary for the purpose of inspection and supplementary performance, in particular transport, travel, labour and material costs as well as any dismantling and installation costs even if it transpires that no defect actually existed. This shall not affect our liability for damages in the case of an unjustified request to



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remedy the defect. However, we shall only assume liability if we have realised, or failed to realise due to acts of gross negligence, that there was no defect.

7. Irrespective of our statutory rights and the provisions in Para. 5, the following shall apply: Should the Seller fail to meet its duty of supplementary performance, by rectifying the defect (subsequent improvement) or delivering a non-defective item (replacement delivery) according to our choice, within a reasonable period of grace given by us, we may rectify the defect and claim damages from the Seller for the expenses incurred in this respect and/or advance payment on such expenses. No period of grace shall be required if supplementary performance by the Seller has been unsuccessful or would be unreasonable for us (e.g. due to particular urgency, risks to operating safety or impending unreasonable damage). We shall notify the Seller of such circumstances immediately and even in advance, if possible.
8. Besides, we may reduce the purchase price or withdraw from the contract in the event of a physical or legal defect in accordance with the legal provisions. We furthermore shall be entitled to claim compensation for damages and expenses in accordance with the legal provisions.

IX. Supplier recourse

1. In addition to any claims for defects, we shall have unrestricted entitlement to our legally determined rights to expenses and recourse within a supply chain (supplier recourse in accordance with Sections 478, 445a, 445b or Sections 445c, 327 Para. 5, 327u BGB). We are notably entitled to demand exactly the same supplementary performance (subsequent improvement or replacement delivery) from the Seller that we owe to our customers on a case-by-case basis; in the case of goods with digital elements or other digital content, this also applies with regard to the provision of necessary updates. Our legal right to choose (Section 439, Para. 1 BGB) is not limited by this.
2. Prior to acknowledging or fulfilling any claims for defects raised by one of our customers (including compensation for expenses in accordance with Sections 445a Para. 1, 439 Para. 2, 3, 6 Sentence 2., Section 475 Para. 4 BGB), we shall notify the Seller, provide a brief description of the circumstances and request a written statement. Should the Seller fail to provide a substantiated statement within a reasonable period of time and if no mutually agreeable solution is found, the actual claim for defects agreed by us shall be deemed to be owed to our customer. In this case, the Seller shall be obliged to furnish proof to the contrary.
3. Our claims from supplier recourse shall also apply if the defective goods have been combined with another product or processed in any other way by us, our customer or a third party, for example, by assembly, attachment or installation.



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X. Manufacturer's liability

1. In the event of the Seller being liable for a product defect, the Seller shall hold us harmless of any third-party claims if the cause falls within the Seller's scope of control and organisation and the Seller assumes liability when dealing with third parties.
2. As part of this obligation to indemnify, the Seller must reimburse any expenses in accordance with Sections 683, 670 BGB that arise out of or in connection with any recourse taken by third parties, including for recall action carried out by us. We shall notify the Seller of the content and scope of any recalls, insofar as possible and reasonable, and give the Seller the opportunity to issue a statement. This shall not affect any further-reaching legal claims.
3. The Seller shall conclude and maintain product liability insurance with a fixed minimum cover of EUR 10 million per personal injury/physical damage.
4. The Seller shall also take out and maintain a recall cost insurance policy.

XI. Property rights and material requirements

1. The Seller guarantees that no third-party rights are violated in connection with its delivery. If claims are asserted against us by a third party for this reason, the Seller shall be obliged to release us from these claims upon first written request. The Seller's obligation to release us from these claims relates to all expenses necessarily incurred by us as a result of or in connection with the claim by a third party. We are also entitled to obtain the necessary permits for delivery, commissioning, use, etc. from the holder of the property rights at the expense of the Seller.
2. The Seller guarantees that all deliveries comply with the applicable laws, regulations and other provisions. The Seller is obliged to execute the order so that, in particular, the environmental protection, accident prevention and industrial safety regulations, import and export control regulations as well as the generally recognised occupational health and safety regulations are observed. At our request and at its own expense, the Seller shall provide evidence of compliance with the regulations.
3. At our request, the Seller shall be obliged to provide us or a third party designated by us free of charge with samples of the materials/means used by it for inspection. The costs of this inspection shall be borne by the Supplier if it is found that the materials/means used by it do not comply with the terms of the contract, notably the requirements according to Para. 2. We reserve the right to assert further claims for damages.



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XII. Limitation period

1. Both parties' claims shall be subject to the statutory limitation periods unless otherwise stipulated below.
2. Notwithstanding Section 438, Para, 1, No. 3 BGB, the standard limitation period for claims for defects is 3 years from the passing of risk. The statute of limitation shall start with acceptance if acceptance of goods has been agreed. This 3-year limitation period shall also apply correspondingly to claims based on legal defects, whereby the statutory limitation period for third party claims for real restitution (Section 438, Paragraph 1, No. 1 BGB) remain unaffected; claims based on legal defects shall not become statute-barred as long as third parties can still make claims against us, particularly in the absence of a limitation period.
3. The limitation periods specified in the sale of goods law, including the aforementioned extensions, shall apply to all contractual claims based on defects to the legally permissible extent. If we are entitled to claim compensation for non-contractual damages on the grounds of a defect, the regular legal statute of limitation (Sections 195 and 199 BGB) shall apply, unless the application of the statute of limitation of the sale of goods law would result in a longer statute of limitation in individual cases.

XIII. Governing law and place of jurisdiction

1. These General Terms and Conditions of Purchase and the legal relationship between us and the Seller are subject to the laws of the Federal Republic of Germany under exclusion of international uniform law, notably the UN Convention on Contracts for the International Sale of Goods.
2. If the Seller is a business person within the meaning of the German Commercial Code, legal entity under public law or special trust under public law, the exclusive, including international, place of jurisdiction for all disputes arising from the contractual relationship shall be the location of our head office in Breidenbach, Germany. The same shall apply if the Seller is a business person within the meaning of Section 14 BGB. In any case, we may file claims at the place of fulfilment of the delivery obligation in accordance with these General Terms and Conditions of Purchase and/or any individual agreement which takes priority or at the general place of jurisdiction of the Seller. This shall not affect any legal provisions which take priority, particularly regarding exclusive jurisdiction.
3. Should one or more provisions in these General Terms and Conditions of Purchase be or become invalid, this shall not affect the remaining provisions. The parties shall undertake to replace the invalid provision with an agreement that comes as close as possible to the economic purpose of the invalid provision.