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General Terms and Conditions of Sale and Delivery


§ 1 General

1.1 The legal relations between the Client and Penz crane GmbH (the Contractor hereinafter) are based on these terms and conditions of sale and delivery as amended, even if, in specific cases, explicit reference is not made thereto. These terms and conditions apply to all agreements concluded by and between the Client and the Contractor, unless agreed otherwise by the Parties. The following provisions regarding delivery of goods also apply analogously to services.

Contradictory purchasing conditions and similar of the Client shall not be binding on the Contractor even if the Contractor does not contradict such conditions explicitly or if the Contractor either rendered or renders services for the Client prior to written placement of the order or if the Contractor has accepted or shall accept services by the Client. The Contractor is entitled to withdraw from the agreement if the Client contradicts the validity of the Contractor's general terms and conditions of sale and delivery.

§ 2 Conclusion of the contract

- 2.1 The agreement is deemed to have been concluded when the Contractor has sent a written order confirmation after receiving the order.
- 2.2 All offers not explicitly indicated to be binding are subject to change.
- 2.3 Any changes, deviations from and additions to the agreement must be confirmed in writing by the Contractor in order to be valid.

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§ 3 Drawings and documents

Drawings, sketches, cost estimates, and other technical documents that may be part of the offer shall remain the intellectual property of the Contractor as well as samples, catalogues, brochures, pictures and similar. They must not be utilised, duplicated, reproduced, disseminated or passed on to third parties, published or presented without the Contractor's express approval.

§ 4 Packaging

Unless otherwise agreed,

- a) costs of packing shall ne paod for by the Client,
- b) packaging shall be as customary in the trade.

§ 5 Delivery

5.1 Unless otherwise agreed, the delivery period shall commence on whichever of the following dates is the latest:

- a) date of confirmation of order (see section 2.1);
- b) date of fulfilling all technical, commercial and financial conditions to be fulfilled by the Client under the agreement;
- c) date on which the Contractor receives a down payment to be made prior to delivery of the goods;

5.2 The Contractor is entitled to make partial and advance deliveries.

5.3 In the event that delivery is delayed by a circumstance for which the Contractor is responsible that constitutes a reason for relief pursuant to section 10, the delivery period shall be extended appropriately.

5.4 If the Contractor is responsible for a delay, the Client may either demand performance or, after granting an appropriate period of grace, withdraw from the contract.

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If the period of grace expires without effect due to the fault of the Contractor, the Client is entitled to withdraw from the agreement with regard to all goods not yet delivered by sending a written notification to this effect. The same applies to goods already delivered, that cannot be used appropriately without the goods yet to be delivered.

In this case, the Client is entitled to a refund of payments made for the goods not delivered or for the goods that cannot be used. Moreover, in the event that the delay in delivery was caused by intent or gross negligence on the part of the Contractor, the Client shall also be entitled to damages for justified expenses that he was forced to make until the date of dissolution of the contract. The Client shall return any goods that were already delivered but which are not usable to the Contractor.

- 5.5 If the goods to be delivered cannot be delivered in the condition offered at the date of concluding the agreement because technical improvements have been made, the Contractor is entitled to deliver the current version.
- 5.6 If the Client does not accept the goods delivered under the agreement at the agreed place or at the agreed date and if the delay is not due to an action or omission on the part of the Contractor, the Contractor may either demand performance or, after stipulating a period of grace, withdraw from the agreement.
If the goods are completed and not collected, the Contractor may store the goods at the Client's expense and risk. Moreover, the Client shall be liable for damages pursuant to § 349 UGB.
- 5.7 All claims made by the Client against the Contractor because of Contractor's delay other than those indicated in section 5 are excluded.
- 5.8 Limit of supply: All works and components that are not explicitly stated in the Contractor's final written quotation and in the Contractor's confirmation of order.

§ 6 Prices


- 6.1 Unless otherwise agreed, prices are EXW in accordance with Incoterms 2000 and subject to the VAT rate applicable at the date of invoicing.
- 6.2 Prices apply to the particular order only and are not binding for follow-up orders.

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- 6.3 Prices are based on costs at the date of indicating prices, unless otherwise agreed.
- 6.4 In the event of an increase in wage, energy and material costs or other cost changes not caused by the Contractor during the term of the agreement, the Contractor is entitled to adjust prices accordingly.
- 6.5 Unit prices indicated are only valid if the entire scope of supply and services is ordered. Any additions, changes and similar that were not included at the date of concluding the agreement may affect the purchase price.

§ 7 Payment

- 7.1 Payments must be made in accordance with the agreed terms of payment. Unless other terms of payment are agreed, payments must be made without charges to the Contractor within thirty days as of the date of the invoice. Timeliness of payment shall be determined by the date on which the payment becomes available to the Contractor in the account indicated by the Contractor. If partial payments were agreed, one third of the price shall be due upon receipt of the order confirmation, one third at one half of the delivery time, and the rest on delivery.
- 7.2 The invoice is issued on the day of goods delivery. If no dispatch order of the client is existent with completion of goods or after acceptance duty is becoming valid and the goods have to be stored therefore, the invoice will be issued with the date of goods completion.
- 7.3 Notwithstanding this, the VAT included on the invoice must in any case be paid within thirty days as of the date of the invoice.
- 7.4 Any discount granted is conditioned on payment in full of all uncontested invoices due for payment.
- 7.5 Upon confirmation of Client's change orders prior to delivery, all costs incurred hitherto must be reimbursed if they exceed the down payment.
- 7.6 The Client is not entitled to offset payments with warranty claims or other counter-claims not acknowledged by the Contractor.

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- 7.7 If the Client is in default on an agreed payment or other performance, the Contractor may either demand performance of the agreement and
- a) defer performance of his own obligations until the payments or other performances due have been made,
 - b) extend the delivery deadline by a reasonable period,
 - c) demand payment of the full purchase price due,
 - d) if no reason for relief exists on the part of the Client pursuant to section 10 of these terms and conditions, invoice default interest 8% above the base rate as of the due date, or, after stipulating a reasonable period of grace, withdraw from the agreement.
The Client must in any case reimburse any dunning and collection charges incurred by the Contractor as additional default damages.
- 7.8 Payment obligations, particularly stipulated amounts of money, are agreed to be in EURO. Amounts are converted in all cases on the basis of the officially defined exchange rate. In the event of project interruptions caused by the Client that last longer than six weeks, interim billing shall be performed. Charges for obtaining bank guarantees shall be paid by the Client.
- 7.9 If cancellation of the order is mutually agreed with the Client, the Contractor is entitled to invoice all costs (construction hours, material and similar) demonstrably incurred until the date of cancellation as compensation (at least 30% of the order total). The Contractor explicitly reserves the right to assert any additional claims for damages.

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§ 8 Retention of title

The Contractor retains title to the delivery item until all financial obligations of the Client have been performed in full. The Contractor is entitled to indicate its title on the exterior of the delivery item. The Client must comply with the necessary formal requirements for safeguarding the retention of title.

In the event of seizure or other claim, the Client is obliged to assert the Contractor's title and to notify the Contractor immediately.

§ 9 Warranty / liability


- 9.1 Unless otherwise arranged, warranty shall be on the basis of the statutory provisions.
- 9.2 A warranty obligation exists only for substantial defects that occur within one year of the passing of risk or as of delivery.
- 9.3 The Client may only invoke this clause if he notifies the Contractor of the defects immediately in writing. The provisions on presumption according to § 924 of the Austrian Civil Code (ABGB) are excluded. The Contractor thus notified must, if the defects must be remedied by the Contractor pursuant to the provisions of this article, at his discretion:
- a) rectify the defective goods on site;
 - b) have the defective goods or defective parts returned for rectification;
 - c) replace the defective parts;
 - d) replace the defective goods.
- 9.4 For those parts of the goods that the Contractor obtained from the sub-supplier stipulated by the Client, the Contractor shall only be liable to the extent of his own warranty claims against the sub-supplier.

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- 9.5 If the Contractor manufactures goods on the basis of engineering drawings, drawings or models provided by the Client, the Contractor's liability shall not include the accuracy of the engineering but rather that the goods were manufactured in accordance with the Client's specifications. The Client shall hold the Contractor harmless in the event of any violation of industrial property rights. The Contractor shall not be liable for any repair works or modifications or conversions of old or third-party goods, nor for delivery of second-hand goods.
- 9.6 All additional claims of the Client for any damages whatsoever are excluded unless there is intent or gross negligence. The reversal of the burden of proof pursuant to § 1298 ABGB is excluded.
- 9.7 Unauthorised reworking and inexperienced handling shall result in loss of all warranty claims. Only in order to avert disproportionately severe damage or in the event of the Contractor being in default in rectifying defects, and only after giving written notification and obtaining written approval from the Contractor, is the Client entitled to rectify defects and to demand reimbursement of reasonable costs expressly acknowledged by the Contractor.

§ 10 Reasons for relief

- 10.1 The Parties are partly or wholly released from the obligation to render timely performance of the agreement if they are hindered from doing so by events of force majeure. Events of force majeure are exclusively events that are unforeseeable and inevitable for the Parties and that do not stem from their sphere. A strike is, however, regarded as an event of force majeure.
- 10.2 In the event of proven force majeure, the Parties must make every effort to remove or mitigate the difficulties and damage incurred and to notify the other Party hereof on a regular basis. Dates or deadlines that cannot be adhered to due to the effect of force majeure shall be extended by the duration of this effect of force majeure and, if necessary, by a period to be mutually agreed by the Parties.
- 10.3 If an event of force majeure persists for longer than four weeks, the Client and the Contractor shall negotiate arrangements regarding the consequences with regard to handling the order. If it is not possible to arrive at an amicable solution, the Contractor may withdraw partly or wholly from the agreement.

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§ 11 Data protection

- 11.1 The Contractor is entitled to store, transfer, revise and disclose within his company personal data of the Client within the scope of the business transactions.
- 11.2 The Client undertakes to maintain absolute secrecy vis-à-vis third parties concerning the knowledge that he acquires through the business transactions.

§ 12 Jurisdiction, governing law, place of performance, miscellaneous

- 12.1 Austrian law shall apply. The United Nations Convention on Contracts for the International Sale of Goods of 11/4/1980 as amended is excluded. The court of law in Leoben, Austria, responsible for the subject matter is agreed as the venue. The Contractor is, in any event, also free to recourse to the court responsible for the Client.
- 12.2 The language of the agreement is German. Telefax or email also meet the requirements of written form.
- 12.3 The place of performance for deliveries and payment is the registered office of the Contractor, even if hand-over is agreed to take place at another place.

If any present or future provision or provisions of these terms and conditions shall be held in part or in whole to be illegal or unenforceable or shall become illegal or unenforceable at some later date, the validity of the remaining provisions of these terms and conditions shall not in any way be affected or impaired thereby. The ineffective provision shall be replaced by a valid provision which comes closest to the intention of the Parties underlying the ineffective provision.