

General Terms and Conditions of Delivery (TERMS) of the company PENTAC Polymer GmbH (hereinafter: PENTAC)
For use in business transactions with contractors, last revised 10/2018

I. GENERAL PROVISIONS • SCOPE

- These TERMS apply exclusively to the legal relationships between PENTAC and the Purchaser in connection with PENTAC's deliveries (hereinafter: deliveries). The Purchaser's TERMS apply only if and insofar as PENTAC has expressly consented to them in writing. The scope of the deliveries will be determined by concurrent declarations in writing by both parties.
- PENTAC reserves unrestricted rights of ownership and exploitation to cost estimates, product descriptions, offers and other documents (hereinafter: documents) under intellectual property and copyright law. Documents custom-made for the Purchaser may only be divulged to a third party with PENTAC's prior written consent and must be destroyed if no order is placed with PENTAC.
The same applies to the Purchaser's documents; PENTAC may however make these available to third parties to whom deliveries are admissibly transferred by PENTAC.
- In international commerce, all contractually agreed clauses will be interpreted in accordance with International Commercial Terms (Incoterms 2010), German edition.
- The language of the contract and negotiations is German.
- The term "claims for damages" in these TERMS also includes claims for the reimbursement of expenses spent in vain.

II. OFFER • CONTRACT CONCLUSION • ORDERING PARTY'S WITHDRAWAL

- PENTAC's offers remain without engagement until confirmation in writing by PENTAC. Agreements reached verbally or by telephone only become an integral part of the contract when they are confirmed in writing by PENTAC.
- If the Purchaser orders the goods electronically, PENTAC will confirm the receipt of the order without undue delay. The confirmation of receipt will not yet constitute any binding acceptance of the order. The confirmation of receipt may be combined with the declaration of acceptance.
- The contract will be concluded subject to the correct and timely delivery to PENTAC by its external suppliers. This will apply only where PENTAC is not liable for the failure to deliver, in particular if a congruent hedging transaction is concluded with a PENTAC external supplier.
- The Purchaser will be informed without undue delay about the unavailability of the goods or service. The consideration will be refunded without undue delay.
- If the Purchaser orders the goods electronically, the contract text will be saved by PENTAC and sent back by e-mail to the Purchaser together with these TERMS upon request.
- If the Purchaser withdraws from the contract and is liable for this withdrawal, they are obliged to pay liquidated damages in the amount of 15 % of the net order value plus VAT. If PENTAC provides documentary evidence of greater damage, the higher amount will be owed. The Purchaser is expressly permitted to provide documentary evidence that damage has not occurred at all or has occurred to a significantly less extent.

III. PRICES • PAYMENT CONDITIONS

- In the absence of agreements providing otherwise, the prices and conditions of the currently applicable PENTAC price list at the time of the conclusion of the contract will apply. If charges or other third-party costs included in the agreed price are changed later than 4 weeks after the conclusion of the contract, or new ones arise, PENTAC will be entitled to a price change to a corresponding extent.
Mark-ups for the acceptance of small quantities remain subject to a separate agreement.
- Invoices are payable free PENTAC's paying agent less 2 % sales discount within 10 days after receipt of the goods or without any deduction within 30 days of the invoice date. After the end of this time period, the Purchaser will be in default of payment. During the default, the Purchaser must pay interest on the debt in the amount of 8 percentage points, unless higher interest rates are agreed. PENTAC reserves the right to assert greater damage caused by default.
- The Purchaser will have a right of set-off only if their counterclaims are established by final judgement or acknowledged by PENTAC. A right of retention may be exercised only if the counterclaim is based on the same contractual relationship.
- If the Purchaser is in default of payment with a significant amount or other circumstances occur that are indicative of a significant deterioration of the Purchaser's financial solvency after the conclusion of the contract and the make PENTAC's payment claim appear in danger, PENTAC is entitled to the rights under Section 321 German Civil Code [BGB]. PENTAC then is also entitled to call due all not yet due claims from the ongoing business relationship with the Purchaser.

IV. DELIVERY PERIOD • DEFAULT • IMPOSSIBILITY

- Unless agreed otherwise, the delivery period will begin upon the forwarding of the confirmation of the order. However, this is subject to the timely receipt of all documents to be delivered by the Purchaser, required authorisations and approvals, observance of the agreed payment conditions and the payment of the agreed downpayments.
- The delivery period is observed when the goods have left the works or the readiness for shipping has been notified by the expiry of the said period.
It will be extended appropriately
 - in cases of force majeure, e. g. mobilisation, war, acts of terror, insurgency or similar events,
 - in the event of disruptions of operations through no fault of one's own, in connection with labour disputes, in particular strike and lock-out,
 - in the event of virus attacks and other third-party attacks on PENTAC's IT system, if these have occurred despite the observance of the due care required when taking protective measures against such attacks,
 - in the event of obstacles based on German, American as well as other applicable national, EU or international regulations of foreign trade legislation,
 - if other unforeseen obstacles not susceptible to PENTAC's influence occur, which have a significant influence on the completion or delivery of the delivery item. This also applies if such circumstances occur at external suppliers' premises. The Purchaser will notify PENTAC of the start and end of such obstacles as soon as possible in important cases.
- If default of delivery occurs, the Purchaser may set PENTAC an appropriate period and withdraw from the contract insofar as the contract has not yet been performed after the expiry of such period to no avail. Claims for damages in such cases will be in accordance with Section VIII of these conditions.
- The observance of our delivery obligation will require the timely and proper fulfillment of the Purchaser's obligations. If the shipping is delayed for reasons for which the Purchaser is liable and the Purchaser falls into default of acceptance or they infringe other duties to cooperate, PENTAC is entitled to claim the damage resulting from this, including any additional expenses, with storage in own premises, at least 1 % of the invoice amount for each commenced month, a maximum of 10% of the total invoice amount. In this case, the risks of accidental loss or accidental deterioration of the goods will be transferred to the Purchaser at the time when they fall into default of acceptance. If PENTAC provides documentary evidence of higher storage costs or the Purchaser of lower costs, the storage costs actually incurred must be reimbursed. After expiry of an additional 2-week period set by PENTAC, PENTAC may withdraw from the contract and dispose of the goods elsewhere.
- Both the Purchaser's claims for damages with regard to delay of the delivery as well as claims for damages in lieu of performance are excluded in all cases of delayed delivery, even after the expiry of any period for the delivery set by the supplier. This will not apply if liability is mandatory in cases of intent, gross negligence or with regard to injury to life, limb or health. The Purchaser may only withdraw from the contract in accordance with the statutory provisions if the supplier is liable for the delay of delivery. The above-mentioned regulations are not associated with any reversal of the burden of proof to the detriment of the Purchaser.
- The Purchaser is obliged to declare within an appropriate period, at the supplier's request, whether they will withdraw from the contract with regard to the delay or insist on the delivery.
- If the delivery is impossible, the Purchaser is entitled to claim damages, unless PENTAC is not liable for the impossibility. However, the Purchaser's damages will be limited to 10 per cent of the value of the part of the delivery that cannot be used for the intended purpose with regard to the impossibility. This restriction will not apply if PENTAC is liable in cases of intent, gross negligence or with regard to injury to life, limb and health. No reversal of the burden of proof to the detriment of the Purchaser will be associated with this. The Purchaser's right to withdraw from the contract is unaffected.
- If occurrences within the meaning of article IV no. 2. the economic significance or the content of the delivery change significantly or have a significant impact on PENTAC's operation, the contract will be amended appropriately in observance of the principle of good faith. If this is economically unreasonable, PENTAC is entitled to the right to withdraw from the contract. The same applies if required expert authorisations are not issued or are unusable. If PENTAC wishes to avail itself of this right, PENTAC must notify this to the Purchaser without undue delay after becoming aware of the extent of the occurrence. This also applies if an extension of the delivery period was initially agreed with the Purchaser.

V. SHIPPING • TRANSFER OF RISK • PACKAGING • DELIVERY BY INSTALLMENTS • RECEIPT

- If the Purchaser does not prescribe any particular shipping method, the shipping route and means as well as freight forwarder and carrier will be determined by PENTAC. Goods notified as ready for shipping in accordance with the contract must be called forward without undue delay. Otherwise, PENTAC is entitled to ship them at its own choice after dunning at the Purchaser's expense and risk or store them and invoice them immediately at its own discretion.
- Upon delivery of the goods at the destination, the risk will be transferred to the Purchaser, even in the event of freight-free delivery. If the shipping or the delivery is delayed for reasons for which the Purchaser is liable or the Purchaser falls into default of acceptance for other reasons, the risk will also be transferred to the Purchaser.
- The goods will be supplied in customary commercial packaging.
- PENTAC is entitled to deliver by instalments to a reasonable extent. Customary excess deliveries and short deliveries are likewise permitted.
- The Purchaser may not refuse to take receipt of deliveries with regard to insignificant defects.

VI. CALL FORWARD ORDERS • CONTINUOUS DELIVERIES

- For orders concluded with continuous rollout, PENTAC must place call forward orders and classification for roughly the same monthly quantities; otherwise, PENTAC is entitled to decide by itself in accordance with its fair discretion.
- If the individual call forward orders in total exceed the contractual quantity, PENTAC is entitled, but not obliged, to deliver the additional quantity. PENTAC may invoice the additional quantity at the valid prices at the time of the call forward order resp. the delivery.

VII. MATERIALS DEFECT LIABILITY

- For materials defects, PENTAC is liable as follows:
- All of the goods or services that have a materials defect must be rectified free of charge, supplied once again or provided once again, at PENTAC's choice, unless its cause already existed at the time of the transfer of the risk.
 - Claims for supplementary performance will expire by limitation in 12 months from the statutory start of the limitation period. The same applies for withdrawal and reduction of the purchase price. However, this period does not apply if
 - in the event of intent and
 - in the event of fraudulent concealment of the defect as well as
 - in the event of failure to comply with the warranty of quality.

The Purchaser's claims for the reimbursement of expenses in accordance with Section 445 a BGB (seller's recourse) will likewise expire by limitation in 12 months from the statutory start of the limitation period, provided that the last contract in the delivery chain is not a consumer goods purchase.

The statutory regulations on the suspension of expiry, suspension of the running and new beginning of the periods remain unaffected.

- Materials defects must be notified in writing without undue delay no later than eight working days after delivery. Materials defects that cannot be discovered despite the most careful inspection within this period must be notified in writing after discovery – with immediate discontinuation of any handling and processing, no later than before the expiry of the agreed or statutory limitation period.
- No claims for defects will exist in the event of only insignificant deviation from the agreed quality, in the event of only insignificant impairment of the serviceability, in the event of natural wear and tear or damage that arises after the transfer of the risk as a result of defective or negligent handling, excessive use, unsuitable operating material or which arise due to particular external influences that are not presupposed in accordance with the contract. If improper changes are carried out by the Purchaser or by third parties, no claims for defects will exist for these and the resulting consequences either.
- PENTAC must be given the opportunity to render the supplementary performance within an appropriate period. If the supplementary performance is unsuccessful or this is refused by PENTAC, the Purchaser may withdraw from the contract or request the reduction of the purchase price ("Minderung") after the expiry of the appropriate period to no avail. If the defect is not significant or the goods are already sold, processed or reconfigured, they are only entitled to the right to reduce the purchase price.
In the event of claims for defects, the Purchaser's payments may be retained in an amount that is proportionate to the materials defects that have occurred. No right of retention by the Purchaser will exist if their claims for defects have expired by limitation. If the notice of defects was given without good reason, PENTAC is entitled to claim that the expenses incurred by PENTAC be reimbursed by the Purchaser.
- If the Purchaser does not give PENTAC the opportunity to convince itself that it is entitled to query the defects without undue delay, they will not make available the queried goods or material samples of these for testing purposes without undue delay, in particular upon request, all rights with regard to materials defect will cease to apply.
- The Purchaser's rights of recourse against PENTAC in accordance with Section 478 BGB (contractor's recourse) will exist only insofar as the Purchaser has not reached any agreements going beyond the statutory claims for defects with their customer. For the scope of the Purchaser's right of recourse against the supplier in accordance with Section 478 para. 2 BGB, in addition no. 5 will apply accordingly.
- The Purchaser's claims with regard to the expenses required for the purpose of the supplementary performance will be excluded insofar as the expenses are not increased because the subject matter of the delivery is subsequently shipped to a different place than the Purchaser's branch office, unless the shipping is in accordance with the intended use. This will apply accordingly for the Purchaser's claims for the reimbursement of expenses in accordance with Section 445 a BGB (seller's recourse), provided that the last contract in the delivery chain is not a consumer goods purchase.
- The Purchaser's claims for damages with regard to a materials defect are excluded. This does not apply in the case of fraudulent concealment of the defect, in the case of failure to comply with a warranty of quality, in the event of injury to life, limb or health and in the event of an intentional or grossly negligent breach of duty by PENTAC. The above-mentioned regulation is not associated with any reversal of the burden of proof.
- Our further liability is in accordance with Section VIII of these terms and conditions.

VIII. LIMITATION OF LIABILITY • EXPIRY BY LIMITATION

- Unless regulated in these TERMS otherwise, the Purchaser's claims for the reimbursement of expenses (hereinafter: claims for damages), based on whatever legal grounds, in particular with regard to the breach of obligations under the contractual obligation or based on tort, also by our legal representatives and/or vicarious agents, are excluded.
 - The above-mentioned restrictions do not apply if liability is mandatory, e.g.
 - under the German Product Liability Act [Produkthaftungsgesetz],
 - in cases of intent,
 - gross negligence by proprietors, legal representatives or executive employees,
 - with regard to culpable injury to life, limb or health, or with regard to the breach of material contractual obligations.
- The claim for damages for the breach of material contractual obligations however is limited to foreseeable damage typical of the contract, unless another of the above-mentioned cases occurs. The above-mentioned regulations are not associated with any reversal of the burden of proof to the detriment of the Purchaser.
- Unless agreed otherwise, contractual claims accrued by the Purchaser against us by reason of and in connection with the delivery of goods will expire by limitation one year after delivery of the goods. This will not affect our liability based on intentional or grossly negligent breaches of obligation, culpably caused injury to life, limb, health as well as the expiry by limitation of recourse claims under Section 478, 479 BGB. In the event of claims for damages under the German Product Liability Act [Produkthaftungsgesetz] the statutory limitation regulations will apply.

IX. RESERVATION OF OWNERSHIP

- PENTAC reserves ownership of the goods/delivery until the settlement in full of all claims against the Purchaser under the ongoing business relationship.
- The Purchaser is obliged to treat the goods with due care.
- The Purchaser is obliged to notify PENTAC of any access to the goods by a third party, for example in the event of attachment, as well as of the damage or destruction of the goods, without undue delay. The Purchaser must notify us without undue delay of a change of possession of the goods as well as a change of their company registered office. Required information by the Purchaser must be issued and required documents must be handed over by the Purchaser.
- In the event of the conduct by the Purchaser contrary to the contract, in particular in the event of default of payment or in the event of the breach of an obligation in accordance with item 2 and 3 of this provision, PENTAC is entitled to withdraw from the contract and request to the return of the goods after setting an appropriate time period. The provisions on the necessity of setting the period are unaffected.
Taking back the goods resp. the assertion of the reservation of ownership or attachment of the goods subject to reservation of ownership by PENTAC does not constitute a withdrawal from the contract, unless PENTAC has expressly declared this.
- The Purchaser is entitled to resell the goods in the ordinary course of business however only on condition that the Purchaser receives payment from their customer or makes the reservation that the ownership will only pass to the Purchaser's customer when this customer has fulfilled their payment obligations. The Purchaser hereby assigns to PENTAC already now all of their claims with all subsidiary arrangements, including balances receivable, in the invoice amount incurred by them against a third party through the resale. This also applies without requiring a particular declaration. PENTAC accepts the assignment.
After the assignment, the Purchaser is authorised to withdraw the claim.
If cause exists, in particular in the event of default of payment, suspension of payments, the opening of insolvency proceedings, bill protest or reasonable indications of excessive indebtedness or imminent insolvency of the Purchaser, PENTAC is entitled to revoke the Purchaser's authorisation to withdraw. Moreover, PENTAC may disclose the assignment by way of security, realise the assigned claims as well as request the disclosure of the assignment by way of security by the Purchaser to the customer following a prior warning giving appropriate notice.
- During the existence of the reservation of ownership, the Purchaser is prohibited from a pledge or assignment by way of security.
- The handling and processing of the goods by the Purchaser will always be done on behalf and by the order of PENTAC. If goods are processed with items not belonging to PENTAC, PENTAC will acquire co-ownership of the new item in proportion of the value of the goods supplied by PENTAC to the other processed goods. These goods will be considered to be goods subject to reservation of ownership. The same applies if the goods are or will be mixed with items not belonging to PENTAC. The Purchaser must store the goods delivered subject to reservation of ownership properly and separately from other goods during the period of PENTAC's intellectual property rights.
- If the value of the securities due to PENTAC under item 1 and item 5 exceeds the nominal amount of our claim against the Purchaser by more than 20 %, at the Purchaser's request, PENTAC is obliged to release the security, at our choice, to this extent.

X. QUALITIES • DIMENSIONS • WEIGHTS

- Qualities and dimensions will be in accordance with the DIN / EN standards resp. material specifications applicable upon the conclusion of the contract; in the absence of such according to customary usage. References to standards, materials specifications, works inspection certificates, as well as details of qualities, dimensions, weights and usability are not details of quality, assurances or guarantees, just as little declarations of conformity, manufacturer's declarations and corresponding identifying marks.
- The record of weights is drawn up in accordance with commercial weights. Item numbers of pieces, bales of materials or similar indicated in the shipping notice are without engagement in the case of goods invoiced according to weight. Unless an individual weighing is usually done, the total weight of a consignment applies in each case. Differences compared to the arithmetical individual weights will be distributed proportionately to these.

XI. PLACE OF PERFORMANCE • RESERVATION OF PERFORMANCE • LEGAL VENUE • APPLICABLE LAW

- In the event of delivery ex works, the place of performance will be the supplier's works; in the case of the other deliveries, this will be PENTAC's registered office resp. warehouse.
- The performance of the contract will be on condition that there are no obstacles due to German, American as well as other applicable national, EU or international regulations of foreign trade legislation as well as no embargos or other sanctions. The Purchaser is therefore obliged to provide the required documents for an export, shipping resp. import.
- The legal venue for all disputes arising directly or indirectly from the contractual relationship will be PENTAC's registered office.

The same legal venue applies if the Purchaser does not have any general legal venue in Germany, transfers their place of residence or place of habitual residence after the conclusion of the contract or the place of habitual residence is unknown at the time of bringing an action.

- The contractual relationship is governed exclusively by the law of the Federal Republic of Germany. This also applies for claims under product liability. The Hague Sales Laws (Uniform Law on the International Sale of Goods / Hague Convention on the Law Applicable to the International Sale of Goods) as well as the UN Convention on the International Sale of Goods (CISG) do not apply.

XII. SEVERABILITY CLAUSE

The invalidity of individual provisions of the contract will not affect the validity of the other provisions of the contract. This does not apply if adherence to the contract would constitute an unreasonable hardship for one party.