

## **PantaTec GmbH, Marienfeld**

### **General Terms and Conditions of Sale and Delivery**

**Version: 22.06.2012**

#### **1. Scope/Severability Clause**

1.1. Our goods and services are delivered and performed exclusively in accordance with the following General Terms and Conditions of Sale and Delivery. They also apply to all future business relationships, even if they have not been separately and expressly agreed. They also apply to deviating conditions of the customer, which we hereby expressly reject, even if we have not expressed our objection in each individual case.

1.2. Our Terms and Conditions of Sale and Delivery also apply if we execute a delivery to the customer without reservation, knowing of customer's conditions that are contradictory or otherwise deviate from our General Terms and Conditions of Sale and Delivery. Nor are we under any obligation if the customer's terms and conditions of business deviate from legal regulations, regardless of the content of these General Terms and Conditions of Sale and Delivery.

1.3. Should we – especially for reasons of goodwill – waive the application of our contractual rights in individual cases within the framework of a business relationship with the customer, this will not signify any general waiver of the future application of our contractual rights.

1.4. Should one provision of these General Terms and Conditions of Sale and Delivery be or become invalid, this will not affect the validity of the remaining provisions and agreements. The invalid provision will be replaced by a valid provision, which comes as close as possible to the economic intention of the invalid provision.

#### **2. Offer and contract closure**

2.1. Our offers are non-binding. They are exclusively invitations for the customer to submit an offer.

2.2. The customer's order is a binding offer. We can accept or decline the offer at our discretion within a period of 4 weeks by sending a written order confirmation (also valid per Fax or eMail). If delivery is made immediately, the invoice is also valid as the order confirmation. Contract closure is conditional on the delivery to us of any necessary import and export licenses.

2.3. Our employees, dealers and other sales agents are not authorised to waive the requirement for written order confirmation or to agree to deviating content or to commit to guarantees. Where our products are sold by third parties – especially dealers and field sales representatives – such persons do not have any power of attorney to act on our behalf or to make any statements that affect us positively or negatively.

#### **3. Prices and payment**

3.1. Unless otherwise specified in the order confirmation, prices are valid 'ex works'. The prices are subject to the addition of statutory value added tax and any other country-specific export duties.

3.2. We reserve the right to increase our prices in response to increased costs after contract closure, especially due to tariff agreements and increased cost of materials where there is a period of at least four months between contract closure and scheduled delivery.

3.3. The customer is obliged to pay the purchase price within the deadlines agreed with him. Should such an agreed deadline pass without receipt of payment, he will be in default from this point without the requirement for any separate conditions. Any fees from foreign banks will be charged to the contractual partner. From the date of default, we are entitled to charge companies delinquency interest in the amount of 8 percentage points above the valid basic interest rate of the ECB pa, and to demand a lump sum fee of € 8.00 for each reminder sent. If we are

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Steuer-Nr. 351/5717/1056  
Steuer ID DE272574434 Geschäftsführer:  
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able to document higher damage due to payment default, we are entitled to claim such additional amount. The customer is, however, entitled to prove to us that we have suffered no damage or significantly lower damage as the result of payment default.

3.4. An obligation to pay – excluding cash payments – is only deemed met by us, when the invoice amount has finally been credited to our account. This also applies to payment by cheque. If the customer is a member of a central payment association, payment will be deemed effective when and to the extent transferred to us by said central payment association. Payment by bill of exchange is not accepted.

3.5. If the customer defaults in payment, all other claims will become due immediately, unless the contractual partner proves that the default was beyond his control.

3.6. If, in an exceptional case, discount for prompt payment within a specific period has been agreed, this agreement will be subject to receipt of payment for all earlier invoiced purchases of goods within the deadlines specified in 3.3 above.

3.7. The customer is only entitled to offset amounts, which have been determined as legally binding, are undisputed or acknowledged by us; he is never entitled to apply assigned claims. The rights of the customer to withhold payment or to raise objections are excluded, unless we significantly violate obligations in the same contractual transaction, despite written warning, without the offer of an appropriate safeguard.

3.8. We are entitled, despite deviating conditions of the customer, to allocate payments to their older debt. If costs and interest have already been incurred, we are entitled to allocate payment initially to costs, then interest and finally the principal goods/services, even if the customer determines otherwise. In the event of financing, the allocation of payments will initially be made to the principal goods/services, then interest and costs.

3.9. If we become aware of circumstances that call into question the ability to pay and the creditworthiness of the customer, especially if his cheque is not honoured, his payments are suspended or if filing for bankruptcy becomes known, we are entitled to claim the entire remaining debt, even if we have accepted cheques. In such cases, we can also demand prepayment and security. If this is not met or is met in a potentially contestable manner, we are not obliged to continue with the provision of goods/services. The same applies in the case of late payment for a previous delivery. Agreed discounts will not be granted in the event of a balance due to us at the time of payment. Once the cited circumstances or filing for bankruptcy become known, and following an appropriate notice period in which the other party must perform concurrently or, at his discretion, provide security, and on fruitless passing of said notice deadline, we are entitled to withdraw from all orders. In the event of such withdrawal, the customer must reimburse our proven costs. This does not affect any other rights to claim for additional compensation.

#### **4. Condition of the sale item**

4.1. The condition of the sale item is based on the brochures, images and other concrete descriptions of the product – also on the Internet - which we make available for viewing at all times and also send on request at any time. The named details are neither assured nor guaranteed.

4.2. The condition of our products will be impaired by incorrect or neglected maintenance. The maintenance instructions contained in the information material mentioned in 4.1 above or otherwise made known to the customer, must therefore be observed in every case.

4.3. Deviations such as are standard in the industry, regarding drawings, images, measurements, weights and other performance data are permitted. We reserve the right to a tolerance of 10% in deliveries.

4.4. The customer is obliged to advise us expressly prior to contract closure if the ordered goods are not intended to be used exclusively for the normal purpose or are to be used in unusual conditions or such that constitute a particular health, safety or environmental risk, or in conditions of increased stress.

#### **5. Use of additives suitable to bind oil and fat used in abrasive processes**

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5.1. Additives, delivered by us, suitable to bind oil and fat, used in abrasive processes can be or will be object of intellectual property rights, especially patents. We will grant to the customer –as far as necessary- the simple not assignable right to use such additives, delivered by us, in procedures covered by our patents.

5.2. It is prohibited to use external products in procedures covered by our patents.

## **6. Delivery and performance term**

6.1. Unloading, shipping, departure and arrival times quoted by us are fundamentally non-binding – unless otherwise expressly agreed and assured.

6.2. Expressly agreed and assured delivery lead times do not begin prior to the submission of any documents to be acquired by the customer, such as are necessary for the preparation of the order, or prior to receipt of agreed advance payments. Deliveries are ex works. A delivery deadline is met when the consignment is ready for shipment within the deadline and the customer is advised of such or when it leaves our premises.

6.3. In the event of force majeure or other unforeseeable, unusual circumstances or circumstances beyond our control, e.g. non-delivery by our suppliers, operational interruptions due to fire, water and similar events, breakdown of production systems and machines, strike or lock out, lack of material, energy, transport possibilities, official hindrance (also if experienced by our suppliers), we are entitled – if prevented from fulfilling our obligation to perform due to the named circumstances beyond our control – to extend the delivery or performance deadline by the duration period of the impediment plus a reasonable start-up period. However, the customer is entitled in such a case to set us an appropriate grace period of at least 14 days in writing, if we exceed the agreed delivery date by more than one week. On fruitless passing of the final delivery date, the customer is entitled to withdraw.

6.4. Prior to the end of the delivery deadline, we are entitled to reasonable partial performance. Partial invoices are permitted.

6.5. If shipment of the goods is delayed by circumstances beyond our control, we are entitled to charge a storage fee of 0.5% of the invoice amount for each month commenced, unless the customer proves that the damage has been lower. All other rights remain unchanged, e.g. all rights in relation to default.

6.6. If an agreed delivery deadline is not honoured due to circumstances under our control, where we have not been grossly negligent or acted intentionally, excluding additional claims, the customer is entitled to claim compensation for the delay or to withdraw from the contract following a reasonable grace period, in accordance with 5.2 above. This also applies in the cases listed in 5.2. Compensation is limited to a maximum of 5% of the part of the shipment that has not been delivered in accordance with the contract. The customer reserves the right to prove higher damage. Withdrawal is excluded if the customer himself is in acceptance default.

6.7. In the case of call orders, the goods must be accepted by the agreed dates. Unless agreed otherwise, the goods must be accepted at the latest by the end of the 12th month after the arrival of the goods at our warehouse. If the customer fails to meet his obligation to accept, he will immediately be in acceptance default and we can issue him with an invoice for the goods.

6.8. If the customer fails to meet his obligation to accept, we are not bound to the provisions governing covering purchase, without prejudice to other rights, but can instead freely sell the delivery items following notification of the customer.

## **7. Transfer of risk**

7.1. Unless the customer's place of business has been agreed as the place of performance, the risk is transferred to the customer as soon as the goods are handed over to the transport agent or have left our commercial address for the purpose of shipment. This is valid regardless of whether we transport with our own company vehicles or external freight forwarders and regardless of whether we carry the cost of transport. The customer is responsible for unloading the goods. Clauses such as 'delivery free....' and similar will merely result in an adjustment of the transport fee, but will not alter the provision above governing the transfer of risk.

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7.2. If shipment is delayed for reasons under the control of the customer, risk will be transferred to the customer when goods are made available to the customer.

## 8. Liability for defects

8.1. The warranty rights of the customer are conditional upon his proper compliance with his obligation to inspect and report under Sec. 377 German Commercial Code (§ 377 HGB). Obvious defects and such that are recognisable on proper inspection – where such is possible in the course of normal business – and typical defects as well as typical variations of qualitative, quantitative or other nature must be reported by the customer in writing within 8 days of receipt of the goods. The contractual partner is obliged to provide us with a detailed written description of the defects reported. Defects that are neither obvious nor recognisable on proper inspection must be reported by the customer in writing within 8 days of discovery. In the event that the report deadline is missed, we will not honour a warranty in relation to the relevant defects. Processing complaints received and inspecting goods do not constitute a waiver of our right to declare the reports late or insufficient. If defects occur the treatment and processing of goods shall be immediately stopped after consultation with us.

8.2. We offer no warranty for damage and disruption due in particular to natural wear and tear, incorrect installation or commissioning by the customer, improper usage, incorrect or inadequate power supply, operating with the wrong type of power or voltage, fire, lightning, explosion, humidity and non- execution of necessary or recommended operation and/or maintenance work. Nor do we offer any warranty if parts are replaced or consumables are used which do not meet the original specification. In particular our warranty is deemed invalid, if, at the building, where our goods were deposited changes are made or occur changing the requirements applied by us at that time.

8.3. We provide a warranty against defects, different from the statutory provisions, for a period of one (1) year from delivery or rather acceptance. This does not apply in cases according to § 438 I No. 2 and § 634a I No.2 German Civil Code (BGB) and claims for damages based on injury on limb, life or health and based on intent or gross negligence of our employees or agents or due to a breach of contract. In the case of a defect, we will initially, at our discretion, repair the defect or deliver a fault-free replacement item. For self-contained parts of the performance the warranty-period shall begin with the partial delivery or partial acceptance. If there is a defect we are authorised, in our discretion, to correct the defect (subsequent delivery) or to deliver conforming goods. Replacement or repair do not cause the renewal of the warranty period. The customer reserves the right, in the event of unsuccessful redress, to reduce the price or at his discretion to withdraw from the contract, if permitted by law. Unsuccessful redress is given if two repair attempts fail. Other claims, especially replacement costs and compensation for damages due to defaults and consequential damage as a result of defaults, are valid only in the parameters of the provisions of Sec. 9 below.

8.4. If in order to claim rights, the customer is obliged to set us an appropriate grace period for our redress, such deadline will only then be reasonable if it is not less than 20 days. We are entitled to refuse redress, if such would incur disproportionate costs. Costs are disproportionate in particular if the total cost of redress would be higher than 30% of the market value of the goods sold. The remaining rights of the customer are unaffected.

8.5. We will carry the necessary costs incurred for redress, especially transport, tolls, work and material costs, unless such are increased by the fact that the item has been taken to a different location than the place of performance. Replaced parts become our property.

When we have only supplied the defective product, but we did not mount it, we are not bound, within the scope of redress, to bear the costs of the possibly required installation of the new item. This does not apply if the customer is consumer in the meaning of § 13 of the German Civil Code (BGB).

8.6. If the defect cannot be found, the customer carries the cost of the inspection.

8.7. Warranty claims against us are valid exclusively for the direct customer and may be only transferred with our prior written consent.

8.8. In the case of insignificant defects, especially deviations in the delivered goods such as minimal deviations and such that are insignificant in value terms in relation to assortment, quality, colour, precise measurement, weight, equipment level or design, such as is usual in the industry or due to the technical process

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(especially the proportions among the goods and in relation to our brochures and lists) the customer is not entitled to withdraw and is obliged to accept delivery.

8.9. Rights to referred warranty provisions in accordance with Sec. 478, 479 German Civil Code (§§ 478, 479 BGB) are valid only if used by the consumer as authorised and only within the scope of the legal provisions. They do not apply to goodwill agreements that have not been approved by us, and are conditional on compliance with the personal obligations of the person entitled to referred guarantee, especially compliance with the obligation to report defects.

8.10. If the redress deadline has passed without success, we are entitled to give the customer notice of one month to assert any remaining warranty claims against us. If he fails to submit such a statement within the grace period, the warranty rights will be excluded; this only applies if we have drawn express attention to this consequence in our demand with notice. This does not apply if the customer is consumer as well as for claims for damages based on injury for limb, life or health, based on intent or gross negligence of our employees or agents or based on a breach of contract.

8.11. The burden of proof of the causation of the sales promotion for the purchase decision lies with the customer. The same shall apply if the customer relies on an agreement on quality advertising by public statement or promotion by us and/or the manufacturer and /or his agents

## 9. Compensation

9.1. Except for the liability acc. to the Product Liability Law, except for fraudulent concealment of a defect or acceptance of a guarantee regarding the quality of goods or damages resulting from injury to limb, life and health we have the obligation regarding the breach arising from the contract with the customer and/or from contract negotiations to pay damages, without waiver of the statutory requirements, only according to the following provisions. The following restrictions also apply to the breach of warranty obligations and in case of default:

- a) We are only liable for culpable violation of material contract obligations and for wilful or grossly negligent violation. By the way the liability is excluded.
- b) Compensation of damages instead of performance due to the delivery of defective goods is excluded, if the defect is insignificant
- c) Acc to the provisions in point 8 above the customer is primarily bound to accept the supplementary performance or rather the legal redresses and he shall claim damages only of a continuing disadvantage but not in lieu of other legal remedies.
- d) In case of liability we replace, taking into accounts the restrictions of e) below, any proven damage of the customer to the extent as the occurrence of loss and damage could have been predicted by signing the contract and could not be foreseen by the customer.
- e) We are not liable for loss of profits or imaginary interference. For the rest, the amount of damages for delay for each full week of delay is 0,5%, in maximum 5%, and for other breaches in maximum 200% of the value of the non-conforming performance part. This does not apply to wilful or grossly negligent breach of duties by our institution , executive employees and/or agents.
- f) Regardless of the compliance with legal provisions or these Terms and Conditions the customer can claim for compensation of damages instead of performances only if he has informed us within reasonable time after due date that he will refuse the performance or he has finally refused it if the performance fails nevertheless.
- g) For reasons of breach of contract and/or its preliminaries towards the customer we are obliged to pay compensation only on the basis of the provisions of these Terms and Conditions. Any recourse on competing claims is excluded, especially on claims not bounded on a contract. It is also excluded to make a claim on our organs of company, employees, staff, agents and/or auxiliary persons individually for reasons of breach of our contract obligations.

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- h) The provisions above regarding our liability shall also apply for claims of the customer for compensation of expenses.

9.2. The customer is obliged, in his relationship to his customers, to constrict his liability on its merits and on its amount within the legal framework and/or common in the branch.

## 10. Reservation of ownership

10.1. All of our deliveries and services are executed with reservation of ownership. Ownership is only transferred to the customer when we have received payment for all of the claims based on our business relationship, as well as those connected with the sale object. This includes all claims, regardless of the legal justification, including all future and conditional claims, also from simultaneously and subsequently executed contracts within the framework of the business relationship. This also applies if payments have been made in response to specific claims. In the case of open accounts, the reservation of ownership acts as security for our outstanding claim balance.

10.2. The customer is obliged to handle the sale object with due care and attention; he is particularly obliged to insure the object for replacement value at his own expense against fire, water and theft. If special maintenance measures are necessary, the customer must conduct these in a timely and professional manner at his own expense.

10.3. The customer may not use the delivery item in which we reserve ownership for mortgage or security purposes. He must advise us immediately in the event of garnishment or seizure or other enforcement by a third party. In such a case, the customer is obliged to provide us with all assistance necessary to exercise our rights. Costs for any necessary intervention will be carried by the customer. On suspension of payments the customer is also obliged to show us evidence of the goods.

10.4. If the customer is in arrears with his payments, we are entitled – without prejudice to the continuation of the contract – to demand the return of the goods immediately, i.e. without withdrawing from the contract. The customer is obliged to hand over the goods. If we avail of the reservation of ownership, this will only constitute withdrawal from the contract if expressly declared as such by us in writing.

10.5. The processing or adaptation of the reserved ownership goods by the customer is always executed on our behalf. In the case of adaptation, processing or mixing of the reserved ownership goods, the reservation of ownership continues in relation to the processed or combined goods. If the reserved ownership goods are processed or inseparably blended with objects that are not owned by us, we will acquire proportional ownership in the new object, in the ratio of invoice value of the reserved ownership goods to the invoice value of the other goods used at the time of processing or blending. The resulting co-ownership rights constitute reserved ownership goods in the sense of these provisions. If our goods are combined or inseparably blended with other movable objects to form a new object, and if the new object is to be seen as the main object, the customer then assigns us proportional co-ownership to the extent that he owns the main object. In the cases listed above, the customer hereby transfers his ownership rights to the processed, combined and blended goods now. In lieu of actual transfer, the customer will safeguard the processed, combined and blended goods for us. The object created by processing, use and blending is also subject to the same provisions as the reserved ownership goods.

10.6. The customer is entitled to process and sell the reserved ownership goods in the normal course of business, unless he is in default of payment to us, has suspended payment or has filed for bankruptcy regarding his assets. The customer hereby transfers to us all rights in full to claims based on resale to his customers or third parties. We hereby accept this assignment. If reserved ownership goods are sold by the customer – after processing/combination – together with goods that do not belong to the customer, he hereby transfers all rights to claims based on resale in the amount of the value of the reserved ownership goods with all secondary rights and ranking us above all others. We hereby accept this assignment by now. The customer is authorised to collect payment even after assignment. Our option to collect payment personally remains unaffected, but we commit to refraining from collecting the payment as long as the customer executes his payment and other obligations in a proper manner, is not in payment default and in particular, has not filed for bankruptcy, suspended payment and if there is no justified doubt in the customer's ability to pay or in his creditworthiness. The customer is not entitled to assign the rights to these claims to any other party.

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10.7. We can demand that the customer notify us of the assigned claims and debtors, all details relevant for collection, hand over of associated documents, and advise the debtors of the transfer. Any bill of exchange received from third party buyers must be transferred to us.

10.8. If the value of the security provided exceeds the sum claim against the customer by more than 20%, we are obliged, at the request of the customer, to release the excess security at our discretion. If we receive returned goods by mutual agreement, we will issue a credit note only for the market value at the time of return.

## **11. Industrial property rights**

11.1. If we are to deliver in accordance with drawings, models, samples or using parts supplied by the customer, the customer is obliged to assure that the property rights of third parties are not thereby violated in the destination country of the goods. We will advise the customer of all rights known to us. The customer must exempt us from third party claims and compensate for the damage incurred. If we are prohibited in manufacture or delivery by a third party in reference to his property rights, we are – without review of the legal situation – entitled to stop work until the legal situation has been clarified by the customer and the third party. If continuation of the order would be unreasonable following the delay, we are entitled to withdraw.

11.2. Drawings and samples provided to us, which do not lead to an order, will be returned on request; otherwise we are entitled to destroy them 3 months after submission of the offer. This obligation applies to the customer equally. The party authorised to destroy the items, must give the contractual partner due advance notice of his intention to destroy the items.

11.3. We are entitled to the copyright and any industrial property rights, especially all usage and exploitation rights, for models, forms and devices, draughts, drawings and delivery items made by us or by a third party on our behalf.

## **12. Applicable law, place of jurisdiction and performance, suspension of statutory limitation**

12.1. The contractual relationship is subject to the laws of the Federal Republic of Germany.

12.2. The place of performance for all obligations under this contract for deliveries – also deliveries free on board -, payments, etc is our commercial address.

12.3 The place of jurisdiction, also for bill of exchange and cheque disputes, is our commercial address, if the customer is a businessman or public body. The same place of jurisdiction applies if the customer does not have a general place of jurisdiction inland or moves his residence or usual domicile abroad after contract closure. In such a case, we can also sue the customer at his address.

12.4. Regardless of other legal provision, the suspension of the statutory limitation also ends if the negotiations on which the suspension is based have not progressed in period of four weeks. A restarting of statutory limitation of claims on the part of the customer always requires our express, written confirmation.

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