

# General terms and conditions of sale, delivery and payment of SPECK PUMPEN Verkaufsgesellschaft GmbH

## **I. Scope**

1. These terms and conditions (T&Cs) apply to all business relations between us, SPECK PUMPEN Verkaufsgesellschaft GmbH, and our customers (hereafter referred to as the "purchaser").
2. Any divergent, supplementary or conflicting terms and conditions of the purchaser will not be recognised unless we have expressly agreed that they shall apply. This requirement for an agreement shall apply in each case, and especially where we execute a delivery to the purchaser without reservation despite having knowledge of the purchaser's T&Cs.

## **II. Contract conclusion**

1. Ordering the goods by the purchaser is deemed a binding offer to conclude a contract. Unless it emerges otherwise from the order we shall be entitled to accept the offer to conclude a contract within two weeks following the point that we receive the offer. The acceptance may be stated in writing – e.g. through an order confirmation – or may be provided by delivering the goods to the purchaser.
2. Our offers are subject to confirmation and are non-binding. This is also the case where we have transmitted images or drawings to the purchaser or weight and measurement information or other documentation in which we reserve title and hold the copyright.

## **III. Delivery and delivery times**

1. Delivery times or periods that are not expressly agreed as being binding are non-binding statements only. The delivery time stated by us only begins once any technical queries have been clarified. The purchaser must also meet all of their obligations properly and on time.
2. We shall be liable under the statutory regulations where the purchaser is entitled to assert a cessation of their interest in continued fulfilment of the contract as a result of a delayed delivery for which we are responsible. In this event our liability shall be limited to foreseeable damage that typically occurs insofar as the delayed delivery is not based on intentional breach of contract for which we are responsible, with culpability on the part of our representatives or agents also being attributable to us.
3. We shall also be liable to the purchaser under the statutory regulations in the event of delayed delivery where this is based on intentional or grossly negligent breach of the contract, with culpability on the part of our representatives or agents also being attributable to us. Our liability shall be limited to foreseeable damage that typically occurs insofar as the delayed delivery is not based on intentional breach of contract for which we are responsible.
4. Otherwise for each complete week of the delay the purchaser may make a flat-rate claim of 3% of the delivery value up to a maximum of no more than 15% of the delivery value in the event of a delayed delivery. A reminder on the part of the purchaser shall also be required in each case. We reserve the right to prove, however, that the purchaser suffered no damage or significantly less damage than that fixed through the flat rate above. This limitation of liability shall not apply where a commercial transaction is concluded for delivery by a fixed date and time.
5. Where a promised and binding delivery time cannot be met for reasons that are not under our responsibility, we shall inform the purchaser of this immediately and shall at the same time communicate a new expected delivery time. If the performance is not possible within the new delivery time then we shall be entitled to withdraw from the contract in whole or in part. We shall immediately reimburse the purchaser for any consideration already provided by the latter. An instance of impossibility of the performance for these purposes is in particular untimely delivery to us by our own supplier. Our statutory rights of withdrawal and termination along with the statutory rules on processing the contract in the case of an exclusion of the obligation to perform (e.g. where the performance and/or supplementary performance is impossible or unreasonable) remain unaffected.
6. If the purchaser is in default of acceptance, neglects to cooperate or if our delivery is delayed for other reasons which are the purchaser's responsibility then we shall be entitled to demand compensation for the damage that has occurred and for any additional expenditure incurred. The same shall apply where the purchaser culpably breaches an obligation to cooperate. In this event the risk of accidental damage or accidental deterioration of the item purchased shall also pass to the purchaser at the point that the latter is in default of acceptance.
7. We are entitled to make partial deliveries at any time insofar as these are reasonable for the customer.

## **IV. Payment terms**

1. The list prices applicable on the day of delivery will be the prices charged unless fixed prices are expressly agreed.
2. Our prices are applicable "ex works" without packaging unless otherwise set out in the order confirmation. The prices do not include statutory VAT. This will be stated and charged separately on the invoice at the statutory amount at the invoice date. No transportation packaging in accordance with the German Packaging Regulation will be taken back.

3. Discounts shall only be permissible where there is a special written agreement between us and the purchaser. The purchase price shall be due for payment within 30 days from the invoice date unless another payment period emerges from the order confirmation. A payment shall only be deemed to have been made where the amount is at the payee's disposal. Cheques will only be accepted on account of performance not, however, in lieu of performance.
4. If the purchaser is in default then interest shall be charged on the purchase price at the applicable default interest rate for the period of the default. A right to assert further claims for damage caused through the default is reserved. Any claim for commercial interest after the due date (section 353 of the German Commercial Code – HGB) remains unaffected.
5. The purchaser shall only be entitled to rights of set-off where their counter-claims are determined in law, are undisputed or are acknowledged by us. Moreover the purchaser shall only be entitled to exercise a right of retention to the extent that their counter-claim is based on the same contractual relationship.

## **V. Transfer of risk and transportation**

1. The risk of accidental destruction or of accidental deterioration of the goods as well as the risk of delay shall pass with the delivery of the goods to the carrier, freight forwarder or other person appointed to execute the shipment. The goods will be loaded and shipped without insurance at the purchaser's risk. The handover shall be deemed to have occurred where the purchaser is in default of acceptance.
2. Unless otherwise agreed we shall be entitled to determine the shipment type ourselves, in particular the transportation company, shipment route and packaging.
3. At the purchaser's request and cost we will insure the delivery with transportation insurance.

## **VI. Retention of title**

1. We shall retain the title in the purchased item until all payments from the delivery contract are received. We shall be entitled to take the purchased item back in the event that the purchaser acts in breach of contract, in particular in the event of default of payment. Where we take the purchased item back this shall not result in a withdrawal from the contract unless we have expressly declared this. Where we pledge the purchased item this shall be deemed a withdrawal from the contract. After we have taken the purchased item back we shall be entitled to realise its value and the amount realised from the sale of the goods shall be applied to the purchaser's obligation – minus any reasonable realisation costs.
2. The purchaser shall be under an obligation to look after the purchased item – they shall in particular be under an obligation to insure it at their own cost against damage from fire and water and theft at replacement value. Where maintenance and inspection work is required the purchaser must execute this in good time at their own cost.
3. In the event of seizure or other interference from third parties the purchaser must inform us immediately and in writing so that we are able to instigate legal proceedings in accordance with section 771 of the German Code of Civil Procedure (ZPO). The purchaser shall be liable for the loss suffered by us where the third party is not able to reimburse us for the judicial and extrajudicial costs for legal proceedings under section 771 ZPO.
4. The purchaser shall be entitled to sell the purchased item on in the ordinary course of business; they shall, however, assign all claims to us at the amount of the final invoice amount agreed by us (including VAT) accrued by them against their own purchaser or third party through the sale, irrespective of whether the purchased item has been sold without or following processing. The purchaser shall also be entitled to collect this claim after the assignment. Our authority to collect this claim ourselves remains unaffected. We undertake, however, not to collect the claim where the purchaser meets their payment obligations from the proceeds collected, is not in default of payment and in particular where no application has been made to open insolvency proceedings or the purchaser has not been declared bankrupt. Where this is the case, however, we may demand that the purchaser reveals the assigned claims and their debtor to us, provides all information required for collection, surrenders the associated documentation and notifies the debtor (third party) of the assignment.
5. Processing or conversion of the purchased item by the purchaser will be carried out in all cases for us. The purchaser's expectancy right to the purchased item shall continue to exist in the converted item. If the purchased item is processed with other items that do not belong to us then we shall acquire co-ownership in the new item proportional to the objective value of our item that has been purchased to the other items processed at the time of processing. For the remainder the same rule shall apply to the item resulting from the processing as for the purchased item delivered subject to reservation.
6. If the purchased item is inseparably amalgamated with other items that do not belong to us then we shall acquire co-ownership in the new item proportional to the objective value of our item that has been purchased to the other items amalgamated at the time of the amalgamation. If the amalgamation occurs in such a way that the purchaser's item is to be deemed to be the main item then it is agreed that the purchaser shall assign proportional co-ownership to us. The purchaser shall hold the sole or co-ownership that arises this way for us as a custodian.

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7. The purchaser shall also assign to us the claims to secure our claims against them that arise through combining the purchased item with a piece of land against a third party.

8. At the purchaser's request we undertake to release the securities to which we are entitled to the extent that the realisable value of our securities exceeds the claims to be secured by more than 10% or the nominal amount by more than 50%; we shall be entitled to select the securities to be released.

## **VII. Warranty**

1. The purchaser's warranty rights require that the purchaser has duly complied with their obligations to examine and notify of defects under section 377 HGB.

2. Warranty rights are excluded where used goods are delivered, subject to the liability under VIII.

3. Where the purchased item contains a defect for which we are responsible we shall be entitled to execute supplementary performance by rectifying the defect or to execute a replacement delivery at our discretion. In the event of defect rectification we shall be responsible for all expenditure required for the purposes of rectifying the defect, in particular transportation and carriage costs and work and material costs, unless these increase through the fact that the purchased item has been transported to a different location to the place of fulfilment.

4. In the event that the supplementary performance fails the purchaser shall be entitled at their discretion to withdraw from the contract or to claim a corresponding reduction in the purchase price.

5. Where the reason for the damage is based on wilful intent or gross negligence we shall be liable in accordance with the statutory provisions. This shall also apply where the purchaser requests compensation in lieu of performance due to the lack of a guaranteed feature of the item.

6. The warranty period shall be 12 months from the date of the transfer of risk.

7. If use of the item results in an infringement of intellectual property rights or copyrights in Germany, we will in principle procure the right for the purchaser to continue to use the item or modify the item delivered in a manner which is reasonable for the purchaser and in such a way that there is no longer any infringement of the property right. Where this is not possible under economically reasonable conditions or within a reasonable period the purchaser shall be entitled to withdraw from the contract. We shall also be entitled to a right to withdraw from the contract under the conditions stated. Moreover we will release the purchaser from any undisputed claims of the relevant owner of the property right or any claims determined in law.

8. The obligations stated under 7.) are conclusive in the event of an infringement of a protective right or copyright subject to point VIII. They shall exist only where:

- the purchaser informs us immediately of any claims that are asserted for protective right or copyright infringements,
- the purchaser supports us adequately in our defence against the claims asserted or enables us to carry out the modification measures under point 8.),
- all defensive measures including extra-judicial settlements remain reserved for us,
- the legal defect is not based on an operation of the purchaser and
- the infringement of the right has not been caused through the fact that the purchaser has independently changed the item delivered or used it in a manner not provided for under the contract.

9. No guarantee will be provided by us.

## **VIII. Liability**

1. Irrespective of the subsequent limitations of liability we shall be liable under the statutory regulations for damage to life, limb and health which is based on a culpable breach of obligation by us, our legal representatives or our agents, as well as for damage that is covered by the liability under the German Product Liability Act. For any damage that is not covered by sentence 1.) and which is based on intentional or grossly negligent breach of obligation or deceit on our part, our legal representatives or our agents, we shall be liable in accordance with the statutory regulations. In this event, however, the liability for compensation shall be limited to foreseeable damage that typically occurs unless we, our legal representatives or our agents have acted with intent.

2. We shall also be liable for damage that we cause through simple negligent breach of those contractual obligations the fulfilment of which enables due fulfilment of the contract in the first place and that the purchaser routinely trusts and may trust have been met. We shall, however, only be liable where the damage is typically associated with or foreseeable under the contract.

3. Any further liability is excluded irrespective of the legal nature of the claim asserted. This applies in particular also to claims in tort, claims for compensation for futile expenditure or for lost profits and other financial damage of the purchaser; we shall not be liable in the event that the purchaser does not comply with operator instructions that are also supplied where the specifications in these must be strictly complied with; nor shall we be liable for normal wear and tear, for damage to parts subject to abrasion and wear such as seals, bearings and similar items where there is incorrect or negligent treatment of the goods, where maintenance and servicing are not in compliance with the regulations or where there is exposure to unsuitable work equipment or chemical, electrochemical and electrical influences, unless we are responsible for these. Liability is also excluded where the purchaser or a third party

carries out improper repairs or makes changes to the goods without our prior written consent.

## **IX. Data protection**

All the personal data communicated by the purchaser (title, name, address, e-mail address, telephone number, fax number, bank details, credit card number) will be collected, processed and saved by us exclusively in accordance with the regulations of German data-protection law. Where personal data of the purchaser is required for substantiating or amending the contractual relationship or formulating its content, this personal data will be used by us exclusively for processing the concluded purchase agreements, for instance for delivering the goods to the purchaser at the stated address. There will be no use of on-hand data above and beyond this for advertising or market-research purposes or to formulate offers.

## **X. Construction services**

Part B of the contracting rules for the award of public works contracts (VOB/B) shall apply in its relevant applicable version in the event that we take on construction services for the purchaser.

## **XI. Place of performance, place of jurisdiction and applicable law**

The place of performance for all obligations from the contractual relationship with the purchaser is our head office in Neunkirchen. The place of jurisdiction for all disputes arising between us and the purchaser from the contractual relationship as well as on its origin and effectiveness will be determined by our head office. The law of the Federal Republic of Germany shall apply to these T&Cs and to all legal relations between us and the purchaser, to the exclusion of all international and supra-national (contractual) legal systems, in particular the UN Convention on Contracts for the International Sale of Goods.

## **XII. Severability clause**

In the event that regulations in these T&Cs are or become ineffective then this shall not affect the validity of the remainder of the contract. The parties agree that the ineffective provision will be replaced by a regulation which comes as close as possible to it in terms of its economic result.