

Terms and Conditions of Sale, Delivery and Payment of Pano Verschluss GmbH

1. GENERAL
 - 1.1 These conditions of sale shall apply to contractors, legal entities under public law and special funds under public law.
 - 1.2 Our deliveries and performances shall be effected exclusively on the basis of the following terms and conditions and replace all previous steps and conditions.
 - 1.3 Terms and conditions of Partner, which are not expressly acknowledged by us, have no validity.
 - 1.4 Amendments or extensions are subject to the written form requirements of a person authorized by the seller. The contracting parties shall immediately acknowledge in writing any verbal agreements.
 - 1.5 Orders shall become binding only upon our order confirmation.
 - 1.6 The information and pictures contained in the brochures and catalogues are industry-wide approximate values, unless they are expressly referred to as binding.
 - 1.7 The seller is authorized to collect, store, process and use information and data on customers and disclose data to third parties, in particular for the purpose of collecting claims or outsourcing debtor management for storage, processing and use.
 - 1.8 The seller is authorized to sign the claims and all rights from the transaction to third parties.
2. PRICES
 - 2.1 Our prices are in euros, excluding VAT, shipping, pallets and insurance, including cardboard boxes. All other forms of packaging will be invoiced separately.
 - 2.2 Prices do not include costs for print preparations, such as designs, drawings, proofs, etc. Costs will be invoiced separately.
 - 2.3 The minimum print order in the case of caps is 100,000 units. A price surcharge will be negotiated for any lower quantities.
3. TERMS OF PAYMENTS
 - 3.1 All invoices, except as otherwise agreed, will become due within 30 days of the invoice date, without deduction. The receipt of the credit note into our bank account shall be relevant to the timeliness of the payment.
 - 3.2 In the case of payment defaults, we shall be authorized to charge default interest at the rate the bank charges us for current account loans, at least however in the amount of eight percentage points above the respective base rate of the European Central Bank.
 - 3.3 Should we have delivered goods that are undisputedly faulty, the Partner nevertheless shall be obligated to pay for the part, which is free from errors, unless a partial delivery is of no interest to the Partner. In other respects, the Partner may set off only those counterclaims that are recognized by declaratory judgment or are undisputed. Furthermore, in order to exercise a right of retention, the Partner shall be authorized only to do so if this is due to a counterclaim based on the same legal relationship. This shall apply also in the case of the seller's deterioration of assets.
 - 3.4 Bills and checks will be accepted only as per agreement and with a view to performance and subject to the prerequisite of their discountability. Discount charges are recalculated from the day on which the invoice amount becomes due. A guarantee for the timely submission of the bill and check and for the protesting of the bill shall be excluded.
 - 3.5 If upon the conclusion of contract it becomes apparent that our payment claim is at risk due to the Partner's lack of operative capability or payment default, we may refuse performance and shall be authorized to request all claims from the business relationship with immediate effect. We may grant the Partner a reasonable time limit in which the Partner must pay progressively against delivery or security. In the case of the Partner's refusal or expiration of the time limit, we are authorized to withdraw from the contract and demand damages.
4. RESERVATION OF TITLE
 - 4.1 We reserve the right of title to the delivered goods until the fulfilment of all claims from the business transaction with the Partner. A withdrawal from the contract is not required in order to assert the reservation of title, unless the purchaser is a consumer.
 - 4.2 Until the recall, the Partner is authorized to sell the goods in the ordinary course of business, provided the Partner meets its obligations from the business relationship with us. However, the Partner may pledge the conditional goods or assign them as security. The Partner agrees to secure our rights in the conditional goods in the case of credited resale. The right to resale or process goods, as well as the collection of outstanding amounts, shall expire in the case of discontinuation of payment, when filing an application for insolvency proceedings, dishonouring checks or bills or in the case of execution, and collecting receivables. Subsequently received claims must be collected immediately in a special account (authorization to collect).
 - 4.3 In the case of the Partner's breaches of duty, in particular in the case of payment default, we also are authorized to demand payment and withdraw from the contract following the unsuccessful expiration of a reasonable deadline; this shall not affect the legal regulations regarding the dispensability of setting a deadline. The Partner shall be obligated to surrender the goods in its possession.
 - 4.4 We are authorized to withdraw from the contract when a petition for insolvency proceedings concerning the Partner's assets is filed.
 - 4.5 Already at this time, the Partner shall assign as security the rights from the sale or, where appropriate, lease goods in which we hold the rights of ownership, for which the Partner may have received permission. We hereby accept the assignment.
 - 4.6 The Partner shall always process the conditional goods on our behalf. If the conditional goods are mixed or mixed inseparably with other objects not owned by us, we shall acquire the joint ownership of the new object in proportion of the invoice value of the conditional goods to the other processed or mixed objects at the time of the processing or mixing. If our goods are combined or inseparably mixed with other movable objects into a uniform, and the other object must be considered to be the main object, the Partner shall transfer to us the proportional joint ownership if the main object is owned by the Partner. The Partner shall keep in safe custody for us the ownership or joint ownership of said object. In other respects, this shall apply to the object created by processing or combining and/or mixing the created object as well as the conditional goods.
 - 4.7 The Partner shall notify us immediately of third-party executions of judgment regarding the conditional goods, the claims assigned to us or other securities, and submit all documents necessary for an intervention. This also shall apply to impairments of any type.
 - 4.8 If the value of the existing securities exceed the secured claims by a total of more than 20 per cent, we will be obligated to release securities according to our auction upon the Partner's request.
5. DELIVERY
 - 5.1 Except as otherwise agreed, we shall deliver 'ex-works'. Our notification of the readiness for shipping and/or pickup shall be relevant to compliance with the delivery term and/or date.
 - 5.2 The delivery time will start at the time the order confirmation is sent and will be extended appropriately, if the requirements of Clause 12 are met.
 - 5.3 Partial deliveries shall be permissible within reasonable limits. They will be invoiced separately.
 - 5.4 Within a tolerance of ten (10) per cent of the total order volume (in the case of smaller orders, up to 20 per cent), production-related increases or decreases of deliveries are permissible. The total price will be adjusted in accordance with the respective change.
 - 5.5 If it is evident that the goods cannot be delivered within the specified delivery time, we shall notify the Partner immediately and in writing, and give reasons for the delay and, where possible, give an estimated time of delivery.
 - 5.6 If the delivery is delayed due to a circumstance referred to in Clause 12 or because of the Partner's action or omission, the delivery time will be extended appropriately in accordance with the circumstances.
 - 5.7 The Partner may be authorized to withdraw from the contract only if we are responsible for noncompliance with the delivery time and if the Partner has set us an additional deadline that was unsuccessful.
6. SHIPPING AND PASSAGE OF RISK
 - 6.1 Goods ready for shipping must be accepted by the Partner without delay. Otherwise we shall be authorized to ship the goods at our own discretion or warehouse goods at the Partner's expense and risk.
 - 6.2 If the goods were not accepted or accepted only in part within three (3) months following the readiness for shipping, the Partner shall pay the quantity that is still outstanding.
 - 6.3 In the absence of a special agreement, we will choose the mode and route of transportation at our own discretion.
 - 6.4 The risk will be transferred to the Partner at the time of handing over the goods to the railway, forwarding company or carrier and/or at the start of warehousing, at the latest, however, at the time of leaving the factory or warehouse, but also if we have undertaken to effect delivery.
7. LONG-TERM AGREEMENTS AND REQUEST FOR DELIVERY AGREEMENTS, PRICE ADJUSTMENT
 - 7.1 Unlimited agreements may be cancelled with a 12-month time limit.
 - 7.2 In the case of a major change in wages, material or energy costs with long-term agreements (agreements with a term of more than six (6) months), each contracting party is authorized to request a reasonable price adjustment in consideration of these factors.
 - 7.3 Unless a binding order volume has been agreed, we shall to take our calculation as the basis for the non-binding order volume (target volume) expected by the Partner for a specific period. If the Partner purchases less than the target volume, we shall be authorized to reasonably increase the unit price.

- 7.4 Except as otherwise agreed, in the case of delivery agreements based on order requests, we must be notified of binding volumes by the placement of an order at least one (1) month before the delivery date.
- 7.5 Additional costs, which are caused by our Partner due to a late order or subsequent order modifications in terms of time and volume, shall be borne by our Partner; our calculation shall be the deciding factor.
- 8. CONFIDENTIALITY, DRAWINGS AND SPECIFICATIONS**
- 8.1 Each contracting parties shall use all supporting document (including samples, models, graphics and data) and the know-how the Partner obtains from the business relationship only for the jointly intended purpose and keep confidential said data with the same care as its own documents and know-how vis-à-vis third parties, if the other contracting party has designated said data as confidential or has an obvious interest in maintaining their confidentiality. This obligation will start initially upon receipt of documents or know-how and concludes 36 months after termination of the business relations.
- 8.2 This obligation does not apply to documents and know-how that are generally known or already were known by the contracting party upon their receipt, without the contracting party having been obligated to maintain confidentiality or which subsequently are conveyed by a third party authorized to disseminate said data or are developed by the receiving contracting party without utilizing the documents to be treated confidentially or without know-how of the other contracting party.
- 8.3 If a contracting party provides the other contracting party with drawings and technical documents regarding the goods to be supplied or their production, said documents shall remain the property of the submitting contracting party.
- 9. SAMPLES AND MEANS OF PRODUCTION**
- 9.1 Except as otherwise agreed, the production costs for samples and means of production (tools, moulds, pressing plates, templates, etc.) will be invoiced separately from the supplied goods. This also applies to means of production that must be replaced due to wear.
- 9.2 We shall bear the costs for maintenance and proper storage, as well as the risk of damage or destruction of the means of production.
- 9.3 Should the Partner suspend or terminate its cooperation during the production of samples or means of production, all production costs incurred until that time shall be borne by the Partner.
- 9.4 Even if the Partner has paid for the means of production in whole or in part, they shall remain our property.
- 9.5 We shall store the means of production free of charge for three years following the last delivery to our Partner. Subsequently, we shall remind our Partner in writing to comment on their further use within a period of six weeks. Our duty to store the goods shall terminate, unless we are notified within six weeks or a new order is placed.
- 10. DEFECTS OF QUALITY**
- 10.1 The quality of the goods exclusively depends on the agreed-upon technical delivery instructions. If we deliver according to drawings, specifications, samples, etc., supplied by our Partner, the Partner shall assume the risk of suitability for the intended purpose. The deciding factor for the contractual condition of the goods shall be the time of the transfer of risk according to Clause 6.3.
- 10.2 We shall not be liable for consequences of improper modifications or repairs by the Partner or third parties, which are performed without our approval. This also shall apply to defects that only negligibly reduce the value or suitability of the goods.
- 10.3 Except as otherwise provided, the statute of limitations for defects of quality shall be contingent on the applicable legal regulations. In the case of wearing parts, the statute of limitations for defects of quality is six (6) months.
- 10.4 If the parties agree to an acceptance of goods or an initial sample inspection, the notice of defects shall be excluded, which the Partner should have detected in the course of proper acceptance or initial sample inspection.
- 10.5 We must be given the opportunity to ascertain the reported defect. On request, the reported goods must be returned to us immediately; we shall bear the shipping costs if the reported defect is justified. If the Partner fails to comply with these obligations or makes changes to the reported goods without our approval, the Partner will forfeit any damage claims.
- 10.6 In the case of a justified, timely reported defect, we shall have the option of either remedying the goods or supplying a fault-free replacement or granting a price reduction.
- 10.7 Should we fail to meet these obligations or meet them within a reasonable period, as stipulated in the contract, the Partner may set an ultimate deadline in writing by which we must meet our obligations. Upon the unsuccessful expiration of this deadline, the Partner may request a price reduction, withdraw from the contract or make the necessary repairs itself or commissioned a third party to make the repairs in question at our risk and expense. A cost reimbursement shall be excluded if expenses increase because the goods were stored in a different location following our delivery, unless this is in keeping with the proper use of the goods.
- 10.8 The Partner's claims of recourse against us shall exist only if the Partner and its customer did not enter into agreements that go beyond the legal claims for defects. Furthermore, Clause 10.7, last sentence, shall apply correspondingly to the scope of the claims under the right of recourse.
- 11. OTHER CLAIMS, LIABILITY**
- 11.1 The partners shall be liable for ensuring that the graphics commissioned by the Partner are free from third-party rights. We do not perform check-ups. In the case of an infringement of third-party rights, the Partner shall hold us harmless against third-party claims.
- 11.2 We shall not be held liable for errors arising from the documents (drawings, samples, colour specimens, EAN codes, declarations, etc.).
- 11.3 Except as otherwise provided in the following, other and extensive claims by the Partner against us shall be excluded. This shall apply in particular to damage claims due to breach of duties from contractual obligations and illegal acts. Furthermore, we shall not be liable for damage that was not caused to the supplied goods. Above all, we shall not be liable for the Partner's loss of profit or damage to property.
- 11.4 The above limitations of liability shall not apply in the case of intent, gross negligence on the part of our legal representatives or managing personnel, or the case of negligent breach of major contractual duties. In the case of negligent breach of major contractual duties - except in cases of intent or gross negligence on the part of our legal representatives or managing personnel - we shall be liable only for typical contractual, reasonably foreseeable damage.
- 11.5 Furthermore, the limitation of liability shall not apply in cases in which under the Product Liability Act, in the absence of the goods, there is liability for privately used objects in the case of personal or property damage. Neither shall this apply in the case of injury to life, body or health, and in the absence of warranted characteristics, if and provided the purpose of the warranty had been in particular to protect the Partner against damage, which was not caused to the supplied goods.
- 11.6 Should our liability be excluded or limited, this also shall apply to the personal liability of employees, collaborators, legal representatives and vicarious agents.
- 11.7 This shall not affect the legal regulations regarding burden of proof.
- 12. FORCE MAJEURE**
- 12.1 Force majeure, industrial action, unrest, delivery failures by our suppliers and other unforeseeable, unavoidable and serious events shall release the contracting parties during the period of the disturbance from their obligations to render services. This also shall apply if these events occur at a time in which the contracting party is in default, unless the default was caused with intent or by gross negligence. The parties agree to immediately provide the necessary information within a reasonable scope and to adapt their duties in good faith to the modified conditions.
- 13. PROPRIETARY RIGHTS**
- 13.1 PANO caps and PANO capping machines, which are protected under patent and utility model laws, must not be shipped directly or indirectly to a country other than that of delivery, without our prior approval. In the case of infringements of proprietary rights, we reserve the right to sue for damages.
- 14. PLACE OF PERFORMANCE, JURISDICTIONAL VENUE AND APPLICABLE LAW**
- 14.1 Except as otherwise provided in the order confirmation, our place of business is the place of performance.
- 14.2 Our place of business is the jurisdictional venue for all legal disputes, including within the scope of a bill of exchange and check litigation. We also are authorized to sue at the Partner's place of business.
- 14.3 The laws of the Federal Republic Germany shall apply exclusively to contract relations. The application of the UN Sales Convention of 11 April 1980 regarding contracts on the purchase of goods (CISG "Vienna Sales Convention") shall be excluded.

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