

# TERMS AND CONDITIONS FOR DELIVERIES AND SERVICES OF PEX Automotive GmbH Status March 1, 2012

## 1. General provisions

1. In respect of the legal relationship between purchaser and supplier concerning the deliveries and services of the supplier (hereinafter referred to as "Deliveries") these Terms and Conditions shall apply exclusively. General terms and conditions of the purchaser are applicable only in so far as the supplier has given his explicit written agreement to them. The scope of deliveries and/or services shall be determined by the corresponding written declarations of both parties.

2. The supplier herewith reserves any industrial property rights and/or copyrights pertaining to his cost estimates, drawings and other documents (hereinafter referred to as "Documents"). The documents may only be made accessible to third parties after prior consent of the supplier and will upon request have to be returned immediately, if the order is not placed with the supplier. The clauses 1 and 2 apply to purchaser's documents accordingly; they may be made accessible to those third parties whom the supplier has authorized to make deliveries.

3. Partly deliveries are acceptable as long as they are reasonable to the purchaser.

4. The term claims for damages in these Terms and Conditions also includes claims for compensation for futile expenses.

## 2. Offers, prices, terms of payments and setoff

1. Our offers are subject to change and non-binding, unless we have designated these as being binding expressly and in writing. Declarations of acceptance and purchase orders of the purchaser shall only become binding by our written order confirmation, if the order is to be qualified as quotation according to § 145 BGB (German Civil Code). After the receipt of orders from the purchaser, they may be accepted by us within a period of twelve working days.

2. Prices are quoted ex works, exclusive of postage, freight, insurance and packing plus VAT at the respective legally valid rate. The prices quoted in our order confirmation shall apply. In the case of contracts where a delivery time of over 8 weeks has been agreed with the purchaser after our receipt of the order and if our cost factors have increased, in particular as a consequence of an increase in labor costs, due to collective agreements and/or changes in the price of materials, an increased price agreed with the purchaser will apply. We will present these cost increases to the purchaser upon request. If the price increases for more than 15% as agreed in the contract, the purchaser is entitled to cancel the contract. Spare parts will be delivered, and repaired goods returned, unless they are covered by liability for material defects, against invoicing of adequate shipping and packaging costs plus the performance implemented by us. Should we agree to take back delivered goods, we charge a flat-rate fee of 15% of the net price of the product concerned as a gesture of goodwill without any legal obligation as compensation for placing the goods back into storage and administration costs incurred.

3. If the supplier has taken on the installation, the assembly or any other service and if no agreement has been made to the contrary, the purchaser bears in addition to the agreed payment all subsidiary costs involved, such as travelling expenses, costs for transportation, as well as field allowances. 4. Payments shall be made free of charge to the supplier's payment office. The invoiced amount will be due for immediate payment. Our invoices are due for payment without deductions within 14 days of the invoice date. Payments by means of a bill are impermissible. The prerequisite for a discount is that the purchaser's account does not show any other invoice amounts due and that partial payments also abide by the payment periods. We are entitled to set payments off against the earliest claim due. However we can make the delivery dependent on concurrent payment (e.g. due to cash on delivery or direct debit), an advance payment or a security deposit. This applies in particular if we become aware of circumstances which cast doubt on the creditworthiness of the purchaser, if a cheque is not honoured, or the purchaser discontinues payment. If the term for payment is exceeded, we can require default interest at a rate of 8 % p.a. above the then applicable base rate under § 247 of the German Civil Code. We reserve the right to prove a higher loss.

5. Counterclaims disputed by us or not yet stated as legally binding do not entitle the purchaser to set off the balance.

## 3. Retention of title

The following basic and advanced retention of title is agreed:

1. The items of supplies (Secured Goods) remain property of the supplier until each and every claim against the purchaser to which the supplier is entitled under this business relationship has been duly satisfied. If the combined value of the security interests of the supplier exceeds the value of all secured claims by more than 20 %, the supplier shall release a corresponding part of the security interest if so requested by the purchaser. The supplier has the right to choose the security interests that are to be released.

2. For the duration of the retention of title, the purchaser may not pledge the retained goods or use them as security, and resale shall be possible only for resellers in the ordinary course of their business and only on condition that the resellers receives payment from his purchaser or makes the transfer of property to the purchaser dependent upon the purchaser fulfilling his obligation to effect payment.

3. In case the purchaser resells the goods under retention of title, he hereby assigns as security any future receivables from the sale of the goods, including all ancillary rights such as accounts receivables to us without there being any requirement for a further declaration. If the goods sold subject to retention of title are resold together with other objects without an individual price having been agreed for the goods sold subject to retention of title, the purchaser assigns to the supplier that part of the total asking price corresponding to the price of the goods sold subject to retention of title invoiced by the supplier.

4. a. The purchaser shall be allowed to process the goods or to mix or combine them with other items. The processing is done on behalf of the supplier. The purchaser shall hold the new item resulting from this processing for the supplier with the due care of a responsible businessman. The new item shall be regarded as a secured good.

b. Supplier and purchaser have agreed that in case of combining or mixing with other goods not belonging to the supplier, the supplier is entitled to co-ownership in the new item at the level of the ratio of the value of the combined or mixed goods subject to retention of title to the value of the other goods at the time of the combination or mixture. The new item shall be regarded as a secured good.

c. The assignment of claims according to No. 3 applies also to the new item. The assignment is, however, valid only at the level of the sum corresponding to the value of the processed, combined or mixed goods invoiced by the supplier.

d. Where the purchaser fails to fulfill his duties, including failure to make payments due, the supplier shall be entitled to cancel the contract and take back the retained goods in the case of continued failure following expiry of a reasonable time set by the supplier; the statutory provisions that a time limit is not needed remain unaffected.

5. The purchaser shall be authorized to collect the assigned claims from the resale until revocation of such authorization. At existence of an important reason, especially default of payment, cessation of payments, disclosure of insolvency proceeding, protest of a bill or legitimated indications for an over - indebtedness or a threatening insolvency the supplier is entitled to revoke the purchaser's direct debit authorization. Moreover, the supplier shall be entitled, after prior announcement and under observation of a reasonable notice period, to disclose the assignment of title, to exploit the assigned claims, and to request disclosure of the assignment of title by the purchaser to his purchasers.

6. The purchaser shall inform the supplier forthwith of any seizure or other act of intervention by third parties. At preliminary proof of an entitled interest the client has to give the supplier necessary information and he has to hand out the necessary documents for assertion of the supplier's rights against himself.

7. Where the purchaser fails to fulfill his duties, including failure to make payments due, the supplier shall be entitled to cancel the contract and take back the retained goods in the case of continued failure following expiry of a reasonable time set by the supplier; the statutory provisions that a time limit is not needed remain unaffected. The purchaser shall be obliged to surrender the retained goods. The act of supplier's reversing delivery, or enforcing the title reservation, or pledging the conditional goods, will not constitute a cancellation of the contract unless the supplier expressly states so

## 4. Delivery Periods; Default of Delivery

1. The fulfillment of the delivery terms requires the punctual receipt of all documents to be supplied by the purchaser of all necessary authorizations and releases, especially of plans as well as the obedience to the payment conditions agreed upon and other obligations of the purchaser. If these requirements are not met in time, the delivery periods shall be extended appropriately; this will not apply, if the supplier is responsible for the delay.

2. If the nonobservance of delivery periods has been caused by vis major, e.g. mobilization, war, revolt, or by similar events, e.g. strike, lock-outs, the delivery periods shall be appropriately extended. The same applies in the event that of delayed or incorrect delivery of the supplier.

3. If the supplier causes a delay in delivery, the purchaser shall - as far as he satisfactorily proves that he has suffered damage therefrom - be entitled to claim a compensation for the delay in the amount of 0.5 % per full week of delay, at the utmost yet of 5 % of the value of that part of the deliveries, which could due to the delay not be appropriately put into operation.

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4. Purchaser's claims for damages due to delayed supplies as well as claims for damages in lieu of performance exceeding the limits specified in No. 3 above shall be excluded in all cases of delayed supplies even upon expiry of a time set to the supplier to effect the supplies. This shall not apply in cases of mandatory liability based on intent, gross negligence, or due to injury of life, body or health. The purchaser may only withdraw from the contract within the framework of legal provisions as far as the delay in delivery falls under the responsibility of the supplier. The foregoing provision does not involve a change in the burden of proof to the purchaser's disadvantage.

5. At the supplier's request the purchaser shall declare within a reasonable period of time whether he cancels the contract due to the delayed supplies or insists on the supplies to be carried out.

6. If dispatch or shipment is delayed at the purchaser's request by more than one month after notice of the readiness for dispatch was given, the purchaser may be charged, for every month commenced, storage costs of 0.5% of the price of the items of the supplies, but in no case more than a total of 5 %. The contracting parties have the right to prove higher or lower storage costs.

## 5. Passing of risk

Risks are passing to the purchaser, also in cases of free-of-charge deliveries, as outlined below:

1. a. If the supply does not include installation or assembly, when goods have been delivered to or picked up by carrier. Upon request of the purchaser, the supplier shall insure the supplies against the usual risks of transport at the expense of the purchaser.
- b. For deliveries with assembly or installation, on the date of acceptance at the purchaser's own business premises or - subject to agreement - after a completely successful trial run.
2. In the case that shipment or delivery or the start or execution of the installation or assembly or the acceptance in the purchaser's facilities or the test run should be delayed for reasons the purchaser is responsible for or if acceptance should be delayed by the purchaser for any other reason, risk shall pass to the purchaser.

## 6. Assembly and installation

Unless otherwise agreed in writing, assembly and installation are subject to the following provisions:  
The purchaser shall carry out and provide the following in due time and at his own expense:

1. a. all earthwork, construction work or other ancillary work not customary in the branch of business, to include all necessary expert workers, assistants, construction materials and tools;
- b. supplies and materials necessary for assembly and repair work such as scaffolding, cranes and lifting equipment and other jigs and fixtures, fuels and lubricant ;
- c. the supply of energy and water at the place of use, including appropriate connections, heating and lighting;
- d. at the place of installation for storage of machine parts, appliances, materials, tools, and the like: appropriate dry, lockable rooms of sufficient size; for installation personnel: appropriate working and lounges, incl. appropriate sanitary facilities; apart from that, the purchaser shall have to take measures for the protection of our property and of the installation staff on site equal to those measures he would take to protect his own property and personnel;
- e. protective clothing and safety devices which any particular conditions at the assembly site may call for.
2. Prior to commencement of the assembly work, the purchaser shall provide all necessary information concerning the locations of concealed electricity, gas and water supply cables and pipes or similar installations as well as the required statistical information without being explicitly requested to do so.
3. Prior to commencement of installation or assembly, required provisions must be made and devices be available at the installation or assembly site, and all groundworks have progressed to an extent that installation or assembly may be commenced as agreed upon and be performed without interruption.
4. Should installation, assembly or commencement of operations be delayed due to circumstances beyond supplier's responsibility, the purchaser shall bear, to a proper extent, any expenses incurred in waiting time and additionally required travel by supplier or assembly staff.
5. The purchaser has to confirm to supplier on a weekly basis the duration of ongoing works performed by the assembly staff, and the finalization of installation, assembly, or commencement of operations without undue delay.
6. If, after completion, the supplier demands acceptance of the supplies, the purchaser shall comply therewith within a period of two weeks.

## 7. Receipt and Acceptance

The purchaser shall not refuse to receive supplies due to minor defects.

## 8. Quality defects

The supplier shall be liable for defects as to quality as follows:

1. All parts or services where a defect becomes apparent, at the discretion of the supplier, be repaired, replaced or provided again free of charge, provided that the reason for the defect had already existed at the time when the risk passed.
  2. Claims for defects shall be subject to a limitation period of 12 months from the beginning of the statutory limitation period; the same shall apply for withdrawal from contract and reduction. This shall not apply in as far as statute prescribes longer periods by virtue of §§ 438 (1) (2) (buildings and building materials), 479 (1) (claim under a right of recourse) and 634a (1) (2) (building defects) German Civil Code in the case of intent, fraudulent concealment of the defect or non-compliance with agreed characteristics. The legal provisions regarding suspension of expiration, suspension and recommencement of limitation periods remain unaffected.
  3. Notices of defects must be carried out by the purchaser in written form without delay.
  4. In the event of notice of defects, payments by the purchaser may only be withheld to an extent which is in proportion to the defects in quality which have occurred. The purchaser, however, may withhold payments only if the subject-matter of the notification of the defect occurred is justified beyond doubt. The right to withhold payment does not exist if the purchaser's claims for defects are statute-barred. The supplier may require the purchaser to reimburse the expenses arising from cases where the notification of defect is unjustifiable.
  5. The supplier has to be conceded an alternative for belated fulfillment within an appropriate period of time.
  6. If a belated fulfillment is failing, the purchaser may irrespective of possible claims for damages (10.) withdraw from the contract or lower the commission.
  7. The purchaser shall not be entitled to assert any claim for defects in case of only minor deviation from the agreed condition of the deliveries or in case of inconsiderable impairment of serviceability or for damages that have occurred after passage of risk through incorrect or negligent handling, excessive use, inappropriate operating materials, defective construction works, or inappropriate building ground or owing to particular exterior influences that had not been provided in this contract, as well as in case of nonreproducible software defects. If modifications, maintenance or repairs are carried out improperly by the purchaser or third parties, there is no claim to warranty for these or for the effects of the same.
  8. Claims of the purchaser with regard to expenses necessary for the purpose of the making good, in particular transport, travel, work and material costs are excluded unless expenses increase because of the subsequent transport of the delivered item to another location than the purchaser's branch and unless the transport is in compliance with the proper use of the item.
  9. The purchaser's right of recourse against the supplier pursuant to § 478 German Civil Code is limited to cases where the purchaser has not concluded an agreement with his customers exceeding the scope of the statutory provisions governing claims based on defects. For the extent of the recourse of the purchaser against the supplier § 478 (2) (8) is valid.
  10. Claims for damages by the purchaser due to a deficiency in matter are barred. This shall not apply in cases of malicious non-disclosure of the defect, non-compliance with agreed characteristics, injury of life, body, health or freedom, as well as in cases where the supplier intentionally or grossly negligently fails to fulfill his obligation. The foregoing provision does not involve a change in the burden of proof to the purchaser's disadvantage. Any additional or other claims of the purchaser on account of a material defect other than those stipulated hereunder in Article VIII shall be excluded.
- ## 9. Industrial Property Rights and Copyright; Defects of Title
- Unless otherwise agreed, the supplier shall provide the supplies free from third parties' industrial property rights and copyrights (hereinafter referred to as Industrial Property Rights) with respect to the country of the place of destination. If a third party asserts a justified claim against the purchaser based on an infringement of an Industrial Property Right with respect to the supplies made by the supplier and then used in conformity within the time period stipulated in Article VIII Nr. 2 as follows:
1. a. The supplier shall choose whether to acquire, at his own expense, the right to use the Industrial Property Right with respect to the supplies concerned or whether to modify the supplies such that they no longer infringe the Industrial Property Rights or replace them. If this would be unreasonable to demand from the supplier,

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the purchaser may cancel the contract or reduce the remuneration pursuant to the statutory provisions.

b. The supplier's obligation to pay damages is determined and set forth under Article XI.

c. The above commitments on the side of the supplier shall only apply if the purchaser will notify the supplier immediately of any claims filed by third parties, will not acknowledge any infringement, and leave any and all defensive measures and settlement negotiations up to the supplier. In case the purchaser should discontinue the use of the deliveries for the purpose of avoiding further damage or for other important reasons, he shall be obligated to draw the third party's attention to the fact that such discontinuation of use does not imply the acknowledgement of any infringement upon Property Rights.

2. Claims by the purchaser shall be excluded to an extent he is responsible for infringement of property rights.

3. Claims of the purchaser shall also be excluded if the infringement of the Industrial Property Right is caused by specifications made by the purchaser, to a type of use not foreseeable by the supplier or to the supplies being modified by the purchaser or being used together with products not provided by the supplier.

4. In the event of Protective Rights being infringed, claims on the part of the purchaser regulated in point 1 a) are subject to the provisions of Article VIII, points 4, 5 and 9. 5. In case of other defects of title the provisions stipulated under Article VIII shall apply accordingly.

6. Any additional or other claims of the purchaser against the supplier and the supplier's vicarious agents because of a deficiency in title than those stipulated hereunder in Article IX shall be excluded.

## **10. Impossibility, Adjustment of the Contract**

1. The purchaser shall be entitled to demand damages should delivery be impossible, unless the supplier cannot be held responsible for the impossibility. The purchaser's claim for damages shall, however, be limited to an amount of 10 % of the value of the part of the supplies which, owing to the impossibility, cannot be put to the intended use. This restriction shall not be applicable as far as cases of intent, gross negligence or injury to human life, body and health are concerned, which are legally subject to liability; a change of the burden of proof to the disadvantage of the purchaser will not be connected thereto. The right of the purchaser to withdraw from the contract remains unaffected.

2. If unforeseeable events within the meaning of Article IV, paragraph 2, significantly change the economic relevance or the contents of the delivery or have a major impact on the supplier's operation, the contract shall be adjusted accordingly under consideration of good faith. In so far as this is not economically acceptable, the supplier shall have the right to cancel the contract. If the supplier intends to exercise his right to cancel the contract, it shall notify the purchaser thereof without undue delay after having realized the repercussions of the event; this shall also apply even where an extension of the delivery period had previously been agreed with the purchaser.

## **11. Other claims for compensation; limitation of time**

1. Claims for compensation by the purchaser whatever the legal basis in particular on account of breach of duties arising from a contractual relationship and acts which are not permitted shall be excluded.

2. This does not apply in the case of mandatory liability, e.g. according to product liability law, in cases of willful conduct, gross negligence, or due to injury to life, body or health, or breach of essential contractual obligations. Claims for damages for the violation of important contractual obligations are, however, limited to contract-typical, predictable damages, provided there is no premeditation or gross negligence, or that liability is assumed on account of loss of life, physical injury or damage to health. The foregoing provision does not involve a change in the burden of proof to the purchaser's disadvantage.

3. If the purchaser claims for damages, barred them with the expiry of warranty applicable statutory limitation period. If the purchaser has a right to damage claim, these expire at the end of the expiry period valid for material defect claims according to Article VIII, No.2. The same shall apply for claims of the purchaser in connection with measures to ward off damages (e.g. product recall campaigns). For damage claims under the product liability law, the legal statutes of limitation apply.

## **12. Place of jurisdiction and applicable law**

1. If the purchaser is a businessperson, sole venue for all disputes arising directly or indirectly out of the contract shall be the supplier's place of business. The supplier is also entitled to bring legal action at the client's place of business.

2. All legal relations resulting out of or in connection with this contract are subject to the substantive law of the Federal Republic of Germany, subject to the exclusion of the United Nations' Convention on Contracts for the International Sale of Goods (CISG).

## **13. Contract Liability**

The contract remains valid and binding in his other provisions even if individual provisions are legally null and void. This shall not apply where adhering to the contract would represent an unreasonable hardship for a party.