

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY of PEZET Aktiengesellschaft for use with companies (as of 01.04.2022)

§ 1 Validity

1. All deliveries and services of Pezet AG (hereinafter referred to as „Seller“) are provided exclusively on the basis of these General Terms and Conditions of Sale and Delivery. These are an integral part of all contracts that the seller concludes with his contractual partners (hereinafter also referred to as „customer“) for the deliveries and/or services offered by him. They shall also apply to all future deliveries and services to the client, even if they are not separately agreed again.
2. Terms and conditions of the customer or third parties shall not apply, even if the seller does not separately object to their validity in individual cases. Even if the seller refers to a letter that contains or refers to the terms and conditions of the client or a third party, this does not constitute agreement with the validity of those terms and conditions.
3. These General Terms and Conditions of Sale and Delivery shall only apply to entrepreneurs within the meaning of Sections 14, 310 (1)

§ 2 Offer and conclusion of contract

1. All offers of the seller are subject to change and non-binding, unless they are expressly marked as binding or contain a specific acceptance period. The seller can accept orders or commissions within 14 days of receipt.
2. The legal relationship between the Seller and the Customer shall be governed solely by the purchase contract concluded in text form or the Seller's order confirmation, including these General Terms and Conditions of Sale and Delivery. The purchase contract or the order confirmation fully reflects all agreements between the contracting parties regarding the subject matter of the contract. Verbal promises made by the seller prior to the conclusion of this contract are not legally binding and verbal agreements between the contracting parties are replaced by the contract in text form, unless it is expressly stated in each case that they continue to be binding.
3. Additions and amendments to the agreements made, including these General Terms and Conditions of Sale and Delivery, must be made in text form in order to be effective; transmission by telecommunication, in particular by fax or e-mail, is sufficient for this purpose.
4. Information provided by the Seller on the subject matter of the delivery or service (e.g. weights, dimensions, tolerances and technical data) as well as representations of the same (e.g. drawings, presentations, illustrations and catalog contents) are only approximate, unless the usability for the contractually intended purpose requires exact conformity. They are not guaranteed characteristics, but descriptions or identifications of the delivery or service. Deviations that are customary in the trade and deviations that occur due to legal regulations or represent technical improvements, as well as the replacement of components with equivalent parts, are permissible provided that they do not impair the usability for the contractually intended purpose.
5. The Seller reserves the right of ownership or copyright to all offers and cost estimates submitted by him as well as drawings, illustrations, calculations, brochures, catalogs, models, tools and other documents and aids made available to the Client. The Client may not make these items accessible to third parties, disclose them, use them itself or through third parties or reproduce them without the express consent of the Seller. At the request of the seller, he must return these items in full to the seller and destroy any copies made if they are no longer required by him in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. Excluded from this is the storage of electronically provided data for the purpose of standard data backup.

§ 3 Prices and payment

1. The prices apply to the scope of service and delivery specified in the contract or in the order confirmation. Additional or special services will be charged separately. The prices are quoted in EUR ex works of the seller plus packaging, plus statutory VAT and, in the case of export deliveries, plus customs duties as well as fees and other public charges.
2. If the agreed prices are based on the Seller's list prices and delivery is to take place more than four months after conclusion of the contract, the Seller's list prices valid at the time of delivery shall apply (less any agreed percentage or fixed discount).

3. Invoice amounts are to be paid within thirty days without any deductions, unless otherwise agreed in writing. The date of receipt by the seller is decisive for the date of payment. If the client fails to pay by the due date, the outstanding amounts shall bear interest at 9 percentage points above the base interest rate from the due date; the right to claim higher interest and further damages in the event of default shall remain unaffected. Ancillary services, such as software, tools, labor, etc. are to be paid within 14 days of receipt of the invoice without deduction. Payments for deliveries abroad must always be made by the client by means of an irrevocable, confirmed letter of credit.
4. Offsetting against counterclaims of the client or the retention of payments due to such claims is only permissible if the counterclaims are undisputed or have been legally established or arise from the same order under which the delivery in question was made.
5. The Seller shall be entitled to execute or render outstanding deliveries or services only against advance payment or provision of security if, after conclusion of the contract, it becomes aware of circumstances which are likely to significantly reduce the creditworthiness of the Client and which jeopardize the payment of the Seller's outstanding claims by the Client arising from the respective contractual relationship (including from other individual orders to which the same framework agreement applies).
6. In the event that, after conclusion of the contract, the net purchase prices to be paid by the Seller to its suppliers for the respective contractual raw materials have risen or fallen by more than 7 percent at the time of their invoicing to the Seller, the Client and the Seller shall have the right to demand that the other contracting party enter into supplementary negotiations with the aim of bringing about an appropriate adjustment of the contractually agreed prices for the contractual materials concerned to the current delivery prices by means of the agreement to be concluded.

§ 4 Delivery and delivery time

1. Deliveries are made ex works of the seller.
2. Deadlines and dates for deliveries and services promised by the seller are always only approximate, unless a fixed deadline or a fixed date has been expressly promised or agreed. If shipment has been agreed, delivery periods and delivery dates refer to the time of handover to the forwarding agent, carrier or other third party commissioned with transportation. The delivery period begins with the dispatch of the order confirmation, but not before clarification of all details of the execution of the order and not before receipt of an agreed advance payment or provision of materials.
3. The Seller may - without prejudice to its rights arising from the Client's default - demand from the Client an extension of delivery and performance deadlines or a postponement of delivery and performance dates by the period in which the Client fails to meet its contractual obligations to the Seller. If, at the request of the client, further services are carried out or agreed services are changed during the execution of the contract, the deadlines for the deliveries and services shall be extended in accordance with the execution period. If an agreed delivery or performance date cannot be met, default shall only occur after expiry of a grace period of at least two weeks granted by the client in text form.
4. The Seller shall not be liable for impossibility of delivery or for delays in delivery insofar as these are caused by force majeure or other events unforeseeable at the time of conclusion of the contract (e.g. Operational disruptions of any kind, difficulties in procuring materials or energy, transport delays, strikes, lawful lockouts, shortage of labor, shortage of energy or raw materials, difficulties in obtaining necessary official permits, official measures or the failure of suppliers to deliver or to deliver correctly or on time, as well as difficulties caused by epidemics or pandemics and/or government-ordered measures affecting the Seller's operations) for which the Seller is not responsible. If such events make delivery or performance significantly more difficult or impossible for the seller and the hindrance is not only of a temporary nature, the seller is entitled to withdraw from the contract. In the event of hindrances of a temporary nature, the delivery or performance periods shall be extended or the delivery or performance dates shall be postponed by the period of the hindrance plus a reasonable start-up period. If the client cannot reasonably be expected to accept the delivery or service as a result of the delay, he may withdraw from the contract by immediate written declaration to the seller.
5. The seller is only entitled to make partial deliveries if
 - *the partial delivery can be used by the client for the contractually intended purpose,*
 - *the delivery of the remaining ordered goods is ensured and*
 - *the client does not incur any significant additional work or costs as a result (unless the seller agrees to bear these costs).*
6. If the Seller is in default with a delivery or service or if a delivery or service becomes impossible for him, for whatever reason, the Seller's liability for damages shall be limited in accordance with § 8 of these General Terms and Conditions of Sale and Delivery.
7. Call-off orders must be called off and accepted by the client in good time and in agreed partial quantities. In the case of call-off orders without an agreement on delivery times, production batch sizes and acceptance dates, the Seller may demand a binding determina-

tion of these no later than 3 months after order confirmation. If the customer does not comply with this request within 3 weeks, the seller shall be entitled to set a two-week grace period and, if this expires without result, to withdraw from the contract or to refuse delivery and claim damages. If the contractual quantity is exceeded by the individual call-offs, the seller shall be entitled, but not obliged, to deliver the surplus. The surplus may be invoiced at the prices valid at the time of the call-off or delivery.

§ 5 Place of fulfillment, shipping, packaging, transfer of risk, acceptance

1. The place of performance for all obligations arising from the contractual relationship is D-72401 Haigerloch, unless otherwise agreed.
2. The shipping method and the shipping route as well as the packaging are subject to the dutiful discretion of the seller, who assumes no obligation for the cheapest shipping. Special requests are at the expense of the client.
3. The risk shall pass to the customer at the latest when the delivery item is handed over (whereby the start of the loading process shall be decisive) to the forwarding agent, carrier or other third party designated to carry out the shipment. This also applies if partial deliveries are made or if the seller has taken on other services (e.g. shipping or installation). If dispatch or handover is delayed due to a circumstance for which the Client is responsible, the risk shall pass to the Client from the day on which the delivery item is ready for dispatch and the Seller has notified the Client of this.
4. Storage costs after the transfer of risk shall be borne by the client. In the case of storage by the seller, the storage costs shall amount to 0.25% of the invoice amount of the delivery items to be stored per week elapsed. We reserve the right to assert and prove further or lower storage costs.
5. The seller shall only insure the consignment against theft, breakage, transport, fire and water damage or other insurable risks at the express request of the customer and at the customer's expense.
6. Insofar as acceptance is to take place, the purchased item shall be deemed to have been accepted if
 - *the delivery and, if the seller is also responsible for commissioning, the commissioning has been completed,*
 - *the Seller has informed the Client of this with reference to the fiction of acceptance in accordance with this § 5 (6) and has requested acceptance,*
 - *fifteen working days have passed since delivery or commissioning or the client has started to use the purchased item and in this case ten working days have passed since delivery or commissioning and*
 - *the customer has failed to accept the goods within this period for a reason other than a defect notified to the seller which makes the use of the purchased goods impossible or significantly impairs them.*

§ 6 Warranty, material defects

1. The warranty period shall be one year from delivery or, if acceptance is required, from the time of acceptance or fictitious acceptance. This period shall not apply to claims for damages by the Client arising from injury to life, limb or health or from intentional or grossly negligent breaches of duty by the Seller or its vicarious agents, which shall in each case become time-barred in accordance with the statutory provisions. This period also applies to the limitation period for recourse claims in the supply chain in accordance with Section 445b (1) BGB. The suspension of expiry according to § 445b para. 2 BGB remains unaffected.
2. The delivered items must be carefully inspected immediately after delivery to the client or to the third party designated by the client. With regard to obvious defects or other defects that would have been recognizable during an immediate, careful inspection, they shall be deemed to have been approved by the customer if the seller does not receive a written notice of defects within seven working days of delivery. With regard to other defects, the delivery items shall be deemed to have been approved by the Client if the notice of defects is not received by the Seller within seven working days of the time at which the defect became apparent; however, if the defect was already apparent at an earlier time under normal use, this earlier time shall be decisive for the start of the notice period. At the Seller's request, a rejected delivery item shall be returned to the Seller carriage paid. In the event of a justified notice of defects, the seller shall reimburse the costs of the most favorable shipping route; this shall not apply if the costs increase because the delivery item is located at a place other than the place of intended use. The customer shall grant the seller the time and opportunity required to remedy the defect at the seller's reasonable discretion. Replaced parts become the property of the seller.

3. In the event of material defects in the delivered items, the seller shall initially be obliged and entitled, at his discretion and within a reasonable period of time, to rectify the defect or supply a replacement. In the event of failure, i.e. the impossibility, unreasonableness, refusal or unreasonable delay of the repair or replacement delivery, the client may withdraw from the contract or reduce the purchase price appropriately.
4. If a defect is due to the fault of the seller, the client can demand compensation under the conditions specified in § 8.
5. Returns and returns of any kind must be reported to the seller by the customer before the defective item is sent.
6. In the event of defects in components from other manufacturers which the Seller cannot remedy for licensing or factual reasons, the Seller shall, at its discretion, assert its warranty claims against the manufacturers and suppliers for the Client's account or assign them to the Client. Warranty claims against the seller for such defects shall only exist under the other conditions and in accordance with these General Terms and Conditions of Sale and Delivery if the judicial enforcement of the aforementioned claims against the manufacturer and supplier was unsuccessful or is futile, e.g. due to insolvency. For the duration of the legal dispute, the limitation period for the relevant warranty claims of the client against the seller shall be suspended.
7. The warranty shall not apply if the Client modifies the delivery item or has it modified by a third party without the Seller's consent and this makes it impossible or unreasonably difficult to remedy the defect. In any case, the client shall bear the additional costs of remedying the defect resulting from the change.
8. If it turns out that the reason for a notice of defect issued by the Client is not given and the Client is responsible for the defect, the Seller may charge all costs incurred by the inspection and rectification to the Client.
9. Any delivery of used items agreed with the client in individual cases shall be made to the exclusion of any warranty for material defects.

§ 7 Property rights

1. If the Seller has to manufacture according to drawings, data, models, samples, molding tools or other specifications of the Client, the Client warrants to the Seller that this does not infringe third-party property rights. If this does occur, the Client shall indemnify the Seller in full against any third-party claims and compensate the Seller for any damages incurred. If a third party asserts industrial property rights to which it is entitled, the seller shall be entitled to cease the manufacture or delivery of the items immediately without examining the legal situation.

§ 8 Liability for damages due to fault

1. The liability of the seller for damages, regardless of the legal grounds, in particular arising from impossibility, delay, defective or incorrect delivery, breach of contract, breach of obligations during contract negotiations and tort is limited in accordance with this § 8, insofar as fault is involved.
2. The Seller shall not be liable in the event of simple negligence on the part of its executive bodies, legal representatives, employees or other vicarious agents, insofar as this does not involve a breach of material contractual obligations. Essential to the contract are the obligation to deliver and install the delivery item on time, its freedom from defects of title and such material defects which impair its functionality or usability more than just insignificantly, as well as obligations to provide advice, protection and care which are intended to enable the client to use the delivery item in accordance with the contract or which are intended to protect the life and limb of the client's personnel or to protect the client's property from significant damage.
3. Insofar as the seller acc. § 8 (2) on the merits, this liability is limited to damages which the seller foresaw as a possible consequence of a breach of contract when the contract was concluded or which he should have foreseen if he had exercised due care. Indirect damage and consequential damage resulting from defects in the delivery item are also only eligible for compensation if such damage is typically to be expected when the delivery item is used as intended.
4. The aforementioned exclusions and limitations of liability shall apply to the same extent in favor of the executive bodies, legal representatives, employees and other vicarious agents of the seller.
5. Insofar as the seller provides technical information or acts in an advisory capacity and this information or advice is not part of the contractually agreed scope of services owed by the seller, this is done free of charge and to the exclusion of any liability.
6. The limitations of this § 8 shall not apply to the Seller's liability for willful conduct, for guaranteed characteristics, for injury to life, limb or health or under the Product Liability Act.

§ 9 Retention of title

1. The retention of title agreed below serves to secure all existing current and future claims of the seller against the customer (including balance claims from a current account relationship limited to this supply relationship).
2. The goods delivered by the seller to the customer shall remain the property of the seller until all secured claims have been paid in full. The goods and the goods covered by the retention of title which take their place in accordance with the following provisions are hereinafter referred to as „goods subject to retention of title“.
3. The customer shall store the reserved goods free of charge for the seller.
4. The client shall be entitled to process and sell the goods subject to retention of title in the ordinary course of business until the event of realization (para. 9) occurs. Pledges and transfers of ownership by way of security are not permitted.
5. If the reserved goods are processed by the customer, it is agreed that the processing is carried out in the name and for the account of the seller as manufacturer and that the seller directly acquires ownership or - if the processing is carried out from materials of several owners or the value of the processed item is higher than the value of the reserved goods - co-ownership (fractional ownership) of the newly created item in the ratio of the value of the reserved goods to the value of the newly created item. In the event that no such acquisition of ownership should occur for the seller, the client hereby transfers his future ownership or - in the above-mentioned ratio - co-ownership of the newly created item to the seller as security. If the reserved goods are combined or inseparably mixed with other items to form a uniform item and if one of the other items is to be regarded as the main item, the seller shall transfer to the customer the proportionate co-ownership of the uniform item in the ratio stated in sentence 1, insofar as the main item belongs to him.
6. In the event of resale of the goods subject to retention of title, the customer hereby assigns to the seller by way of security the resulting claim against the purchaser - in the case of co-ownership of the seller in the goods subject to retention of title in proportion to the co-ownership share. The same applies to other claims that take the place of the reserved goods or otherwise arise with regard to the reserved goods, such as insurance claims or claims in tort in the event of loss or destruction. The seller revocably authorizes the customer to collect the claims assigned to the seller in his own name. The seller may only revoke this direct debit authorization in the event of liquidation.
7. If third parties seize the goods subject to retention of title, in particular by attachment, the customer shall immediately inform them of the seller's ownership and inform the seller of this in order to enable him to enforce his ownership rights. If the third party is not in a position to reimburse the seller for the judicial or extrajudicial costs incurred in this connection, the customer shall be liable to the seller for these costs.
8. The seller shall release the goods subject to retention of title and the items or claims taking their place if their value exceeds the amount of the secured claims by more than 20%. The selection of the items to be released thereafter lies with the seller.
9. If the seller withdraws from the contract in the event of breach of contract by the customer - in particular default of payment - (enforcement event), he shall be entitled to demand the return of the reserved goods.
10. The Seller shall be entitled to enter the Client's warehouse and business premises at any time in order to remove, separate or mark the goods subject to retention of title. Upon request, the customer shall provide the seller with all relevant information about the goods subject to retention of title and hand over any necessary supporting documents. The customer is obliged to insure the reserved goods comprehensively at his own expense in favor of the seller and to provide him with proof of the insurance upon request. He hereby assigns all resulting insurance claims to the seller; the seller accepts the assignment.
11. The assertion of the retention of title shall not be deemed a withdrawal from the contract. The client's right to possession of the reserved goods shall expire if he fails to fulfill his obligations under this or any other contract. The seller shall then be entitled to take possession of the reserved goods himself and, without prejudice to the customer's payment and other obligations towards the seller, to sell them by private sale or by auction at the best possible price. The proceeds from the sale shall be credited to the client's liabilities after deduction of the costs. Any surplus is to be paid out to him.
12. If the retention of title or the assignment is not effective under the law in whose jurisdiction the goods are located, the security corresponding to the retention of title or the assignment in this jurisdiction shall be deemed to have been agreed. If the cooperation of the client is required in this respect, the client shall take all measures necessary to establish and maintain such rights.

§ 10 Tools

1. Unless otherwise agreed, tools, molds, devices and the like - hereinafter referred to as „tools“ - are the property of the Seller, even if the Buyer has paid the costs for them in whole or in part. This shall apply irrespective of whether we ourselves or third parties commissioned by us have manufactured the tools.

2. The Seller undertakes not to manufacture any parts for third parties using tools for which the Client has assumed the entire costs as long as the Client places follow-up orders with the Seller. This obligation shall expire without the Client being entitled to any reimbursement whatsoever from the Seller if no further orders are received by the Seller within two years of the last order.
3. The seller shall store and maintain the tools free of charge. The client shall bear the costs of maintenance and repairs. Our obligation to retain the data shall expire after the two-year period specified in paragraph 2. The seller is then entitled to dispose of the tools without compensation.
4. The above provisions (paragraphs 1.-3.) do not apply to tools for articles that are commonly used and usable.

§ 11 Secrecy

1. The Client shall use all documents (including samples, models, files, etc.) and knowledge as well as information received from the Seller only for the jointly pursued purposes and shall keep them secret from third parties with the same care as its own corresponding documents and knowledge if the Seller designates them as confidential or has an obvious interest in keeping them secret. This obligation begins from the first receipt of the documents, knowledge and information and ends 36 months after the end of the business relationship between the client and the seller. The obligation shall not apply to documents, knowledge and information which are generally known or which were already known to the Client upon receipt without the Client being obliged to maintain secrecy, or which are subsequently transmitted by a third party authorized to pass them on, or which are developed by the receiving Client without the use of documents or knowledge to be kept secret by the Seller.

§ 12 Procurement of materials

1. If the Seller is in an ongoing supply relationship with the Client on the basis of a time-limited framework agreement for a product to be manufactured by the Seller, the Seller shall be entitled and commissioned by the Client to purchase the material required for the manufacture of the product for a quarter of a year after the end of the framework agreement at the Client's expense at normal market conditions in order to ensure production. The Client must pay the Seller for this material even if the business relationship with the Client ends with the expiry of the framework agreement.

§ 13 Final provisions

1. The place of jurisdiction for any disputes arising from the business relationship between the seller and the customer shall be, at the seller's discretion, D-72401 Haigerloch or the customer's registered office. In these cases, however, D-72401 Haigerloch shall be the exclusive place of jurisdiction for legal action against the seller. Mandatory statutory provisions on exclusive places of jurisdiction remain unaffected by this provision.
2. The relationship between the seller and the customer shall be governed exclusively by the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980 (CISG) shall not apply.
3. Insofar as the contract or these General Terms and Conditions of Sale and Delivery contain loopholes, those legally effective provisions shall be deemed to have been agreed to fill these loopholes which the contracting parties would have agreed in accordance with the economic objectives of the contract and the purpose of these General Terms and Conditions of Sale and Delivery if they had been aware of the loophole.
4. The client's data is stored within the scope of the purpose of the respective contractual relationship.