

# GENERAL TERMS AND CONDITIONS OF DELIVERY AND SALE

Status: 10/2019

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## 1 Applicability

These terms and conditions shall apply between PENTANOVA GmbH and the natural persons and legal entities (hereinafter, "Purchasers") for the subject legal transaction and also for future transactions in respect of corporate Purchasers, even if, in the individual case, in particular for future supplementary or follow-up orders, express reference is not made to them.

The following provisions regarding deliveries of goods shall also apply correspondingly to services.

The version of our General Terms and Conditions of Delivery and Sale current upon the conclusion of the agreement (retrievable on our website) shall apply in respect of corporate Purchasers.

We contract only on the basis of our General Terms and Conditions of Business.

For their validity, any terms and conditions of business of the Purchaser, or any amendments or supplements to our General Terms and Conditions of Delivery and Sale, require the express consent of PENTANOVA GmbH - and in writing in respect of corporate Purchasers.

## 2 Offer/conclusion of the agreement

PENTANOVA GmbH's offers shall be-binding.

The agreement shall be deemed to be concluded if, after the receipt of the order, PENTANOVA GmbH has sent a written order confirmation or a delivery.

For their validity, any amendments or supplements to the agreement require the written confirmation of PENTANOVA GmbH. Any terms and conditions of purchase of the Purchaser shall only be binding on PENTANOVA GmbH if they are separately acknowledged by PENTANOVA GmbH.

## 3 Price

The prices shall apply ex works or ex warehouse PENTANOVA GmbH, excluding sales tax, packaging, loading, dismantling, return and proper recycling and disposal.

The prices shall be based on the costs at the point in time of the first price quote. If the costs increase up to the point in time of delivery, PENTANOVA GmbH shall be entitled to adjust the prices accordingly.

## 4 Packaging, transport

In the absence an agreement to the contrary

- a) The indicated prices do not include packaging.
- b) The packaging shall take place in a manner customary in the industry, in order to avoid damages to the goods under normal transport conditions on the route to the specified place of destination, at the expense of the Purchaser, and shall be taken back only if this is agreed.

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## 5 Passage of risk

Unless otherwise agreed, the goods shall be deemed to be sold "ex works" (EXW) (readiness for collection). In all other respects, the INCOTERMS in the version valid on the day of the conclusion of the agreement shall apply.

## 6 Deliveries

The delivery period commences no later than one of the following points in time:

- a) Date of the order confirmation
- b) Date of the fulfilment of all technical, commercial or other conditions incumbent on the Purchaser
- c) Date on which PENTANOVA GmbH receives a deposit or security to be paid prior to the delivery of the goods

PENTANOVA GmbH shall be entitled to carry out and charge for partial deliveries and advance deliveries.

If unforeseeable circumstances, or circumstances independent of PENTANOVA GmbH (such as an event of force majeure) arise, and such circumstances impede adherence to the agreed delivery period, in any event, such delivery period shall be extended by the duration of such circumstances. These include, in particular, armed conflicts, official intervention and prohibitions, transport and customs clearance delays, transport damages, energy and raw materials shortages, labour disputes and the loss of an essential supplier who is difficult to replace. These aforementioned circumstances shall also justify an extension of the delivery period if they affect suppliers.

If PENTANOVA GmbH has caused a delay in delivery, the Purchaser may either demand fulfilment or declare its withdrawal from the agreement, under the setting of a reasonable grace period.

If the provided grace period was not utilized due to the fault of PENTANOVA GmbH, the Purchaser may, by written notice, withdraw from the agreement with respect to all goods not yet delivered. This shall also apply to goods that have already been delivered but cannot be used without the goods that are still outstanding in a reasonable manner. In such an event, the Purchaser shall have the right to be reimbursed for payments made for the goods that have not been delivered or for goods that are not usable. In addition, if the delay in delivery was caused by the gross negligence of PENTANOVA GmbH, the Purchaser shall be entitled to the reimbursement of justified expenses that it had to incur up to the dissolution of the agreement and that could no longer be used. The Purchaser shall deliver back to PENTANOVA GmbH goods that have already been delivered but have not been used.

If Purchaser does not accept goods that have been provided in accordance with the agreement at the contractually agreed location or at the contractually agreed point in time, and the delay is not caused by an act or omission on the part of PENTANOVA GmbH, PENTANOVA GmbH may either demand fulfilment or withdraw from the agreement under the setting of grace period.

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## 7 Acceptance test

If the Purchaser wants an acceptance test, this is to be expressly agreed with PENTANOVA GmbH in written form upon the conclusion of the agreement. Unless any provisions to the contrary have been made, the acceptance test is to be carried out at the place of production or at a place determined by PENTANOVA GmbH during the normal working hours of PENTANOVA GmbH. In doing so, the general practice of the relevant industry is controlling for the acceptance test. PENTANOVA GmbH shall inform the Purchaser of the acceptance test on a timely basis, such that the Purchaser can be present during the test or can be represented by an authorized representative. If, upon the acceptance test, the delivered item turns out to be contrary to the agreement, PENTANOVA GmbH shall immediately remedy any defect and produce the condition of the delivered item in accordance with the agreement. The Purchaser may demand that the test be repeated only in cases with substantial defects. An acceptance report is to be drawn up subsequent to an acceptance test. If the acceptance test has demonstrated that the delivered item has been manufactured according to the agreement and operates properly, this, in any event, is to be confirmed by the Purchaser and PENTANOVA GmbH. If, during the acceptance test, the Purchaser or its authorized representative is not present despite a timely notification by PENTANOVA GmbH, the acceptance report is to be signed only by PENTANOVA GmbH. In any event, PENTANOVA GmbH shall submit to the Purchaser one copy of the acceptance report, the correctness of which the Purchaser may then no longer dispute if it or its authorized representative was not able to sign it because of its failure to be present.

## 8 Payments

Payments are to be made according to the agreed payment terms. If no payment terms have been agreed, an invoice is due within 60 days without any deduction.

The entitlement to deduct a discount requires an express agreement, which is also in writing in respect of corporate Purchasers.

If the Purchaser is in delay with an agreed payment or any other consideration, PENTANOVA GmbH may either insist on the fulfilment of the agreement and

- a) postpone the fulfilment of its own obligations until the settlement of the payments or other consideration in arrears.
- b) avail itself of a reasonable extension of the delivery period.

declare that the entire price that is still outstanding is due.

or

declare its withdrawal from the agreement, under the granting of a reasonable grace period.

In the event of delay, PENTANOVA GmbH shall be entitled to assert interest under § 352 of the Austrian Business Enterprise Code (Unternehmensgesetzbuch). In addition, the Purchaser shall compensate PENTANOVA GmbH for all damages that arise for PENTANOVA GmbH because of the delay; these comprise, among other things, debt collection and reminder fees.

8.5 Upon the request of PENTANOVA GmbH, the Purchaser shall deliver back to PENTANOVA GmbH goods that have already been delivered, and compensate PENTANOVA GmbH for the reduction in value of the goods that has occurred, and reimburse PENTANOVA GmbH for all justified expenses that PENTANOVA GmbH had to pay in carrying out the agreement. With respect to goods not yet delivered, PENTANOVA GmbH shall be

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entitled to provide the Purchaser with the finished or processed components, and to demand the corresponding share of the sales price for them.

## 9 Retention of ownership

Until the complete fulfilment of all financial obligations of the Purchaser, PENTANOVA GmbH shall reserve the right of ownership in the purchased items. PENTANOVA GmbH shall be entitled to externally mark the delivered items that are the property of PENTANOVA GmbH. The Purchaser shall comply with the form requirements required to protect the retention of ownership. Upon any attachment or any other claim, the Purchaser shall be obligated to assert PENTANOVA GmbH's ownership right and provide PENTANOVA GmbH with immediate notification.

## 10 Our intellectual property

Plan, sketches, cost estimates and other documents that are made available by PENTANOVA GmbH or arose through a contribution of PENTANOVA GmbH shall remain the property of PENTANOVA GmbH.

The express consent of PENTANOVA GmbH is required for any use of such documents outside of the intended use, in particular any transfer, duplication, publication or handing over, including any copying in excerpts.

The Purchaser shall be obligated to maintain secrecy in respect of third parties over the knowledge that it receives from the business relationship.

## 11 Warranty

With regard to the amendment of the statutory warranty period, PENTANOVA GmbH and the Purchaser agree to a warranty period of one year from the point in time of the passage of risk.

Upon the delivery of the purchased items, the purchase shall examine them and provide notification of any defects immediately, but at least within a reasonable period of seven calendar days. If the Purchaser fails to do this, all legal claims based on the defect and for consequential damages due to the defect shall lapse. The presumption rule of § 924 of the Austrian General Civil Code (Allgemeines Bürgerliches Gesetzbuch, "ABGB") shall not apply. The Purchaser shall be obligated to prove any defectiveness of the purchased items upon delivery. In the event that the services provided by PENTANOVA GmbH are defective, PENTANOVA GmbH shall remedy or improve this within a period that is reasonable and customary for business operations, or provide for a replacement or a corresponding subsequent delivery. If an improvement, replacement or supplement does not take place within the grace period, the Purchaser may withdraw from the agreement under the setting of an additional grace period. All services already rendered by both parties are to be delivered back on a step-by-step basis. Immediately after becoming aware of them, the Purchaser shall notify PENTANOVA GmbH of any concealed defects, which are defects that are not immediately noticed with careful management; otherwise, they shall likewise be barred.

Unless otherwise agreed, if the Purchaser sends back to PENTANOVA GmbH the defective goods or components for the purpose of repair or replacement, the Purchaser shall assume the costs and risk of transport. Unless otherwise agreed, the return of the repaired or replaced goods or components to the Purchaser shall take place at the expense and risk of PENTANOVA GmbH.

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The defective goods or components replaced in accordance with this section shall be at PENTANOVA GmbH's disposal.

PENTANOVA GmbH shall only be responsible for the costs of a remedy of a defect undertaken by the Purchaser itself if PENTANOVA GmbH has given its written consent to this.

The warranty obligation of PENTANOVA GmbH shall apply only to the defects that occur under compliance with the operating conditions and during normal use. In particular, it shall not apply to defects that are based on the following: incorrect installation by the Purchaser or its authorized agents, poor maintenance, repairs of poor quality or carried out without the written consent of PENTANOVA GmbH or alterations made by a person other than a person of PENTANOVA GmbH or its agents and normal wear and tear.

For those components of the goods that PENTANOVA GmbH has purchased from a sub-supplier prescribed by the Purchaser, PENTANOVA GmbH shall be liable only within the framework of the warranty claims to which PENTANOVA GmbH itself is entitled against the sub-supplier. If goods are manufactured by PENTANOVA GmbH on the basis of design specifications, drawings or models of the Purchaser, the liability of PENTANOVA GmbH shall not extend to the correctness of the design, but to the execution that took place in accordance with the Purchaser's specifications. In any such case, the Purchaser shall hold harmless and indemnify PENTANOVA GmbH upon any violation of industrial property rights. PENTANOVA GmbH accepts no guarantee when taking over repair orders or alterations or conversions of old or third-party goods, or for the supply of used goods.

From the start of the warranty period, PENTANOVA GmbH assumes no further liability than that provided in this section.

## 12 Liability

PENTANOVA GmbH shall be liable to the Purchaser only for those property damages caused by PENTANOVA GmbH through intentional acts or severe gross negligence. Any liability for slight negligence or simple gross negligence is barred. This likewise applies to the reversal of the burden of proof in accordance with § 1298 of the ABGB. In addition, liability shall be limited to the sum that is available under the insurance contract between PENTANOVA GmbH and the liability insurance policy concluded by PENTANOVA GmbH. All claims against PENTANOVA GmbH must be asserted, or otherwise forfeited, in court within 6 months after the Purchaser's knowledge of the damage. In addition, any damages caused by PENTANOVA GmbH arising from production downtimes, lost profits or loss of use are excluded.

The purchased item provides only that level of safety that may be expected on the basis of the registration provisions, the operating instructions, PENTANOVA GmbH's rules on the handling of the purchased item - especially with regard to any possible prescribed inspections - and other instructions given.

## 13 Consequential damages

Subject to any other differing provision in these terms and conditions, any liability of PENTANOVA GmbH to the Purchaser for production downtimes, lost profits, loss of use, contract losses or any other commercial or indirect consequential damages is barred.

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## 14 Grounds for exemption

The Purchaser or PENTANOVA GmbH shall be released from the timely performance of the agreement, in whole or in part, if the Purchaser or PENTANOVA GmbH are hindered in this through an event of force majeure. Events of force majeure include only those events that are unforeseeable to and unavoidable for the Purchaser or PENTANOVA GmbH, and that do not originate within their domain. However, strikes and industrial actions are to be regarded as events of force majeure. However, if the Purchaser is hindered by an event of force majeure, it may rely on the event of force majeure only if the Purchaser informs PENTANOVA GmbH without delay, but at the latest within 5 calendar days, regarding the onset and foreseeable end of the hindrance, by sending by registered mail a statement, confirmed by the respective government authority or chamber of commerce of the delivery country, regarding the cause, the anticipated effects and the duration of the delay. In the event of force majeure, the Purchaser and/or PENTANOVA GmbH shall make every effort to remedy or reduce the difficulties and foreseeable damages, and inform the other party of this on an ongoing basis. Otherwise, the Purchaser and/or PENTANOVA GmbH shall be liable to the other party for damages. Deadlines or time periods that cannot be observed on account of events of force majeure shall be extended by the duration of such events of force majeure, as a maximum, or, if applicable, by a period to be determined by mutual consent. If a circumstance of force majeure lasts for more than four weeks, the Purchaser and PENTANOVA GmbH shall seek a solution for handling the technicalities of its effects by means of negotiations. If no amicable solution is reached, PENTANOVA GmbH may withdraw from the agreement, in whole or in part.

## 15 Severability clause

If one or more provisions of this agreement is or will be ineffective or impracticable, in any case of doubt, this shall not affect the remaining provisions. The Purchaser and PENTANOVA GmbH shall be obligated to replace the ineffective or impracticable provision with an effective or practicable provision that comes closest to the economic content of the ineffective or impracticable provision in a permissible manner. This shall also apply in the event of any gap in the agreement. If this is not possible or unreasonable for the Purchaser or PENTANOVA GmbH, the statutory provisions shall apply.

## 16 Data protection

PENTANOVA GmbH shall be entitled to store, transmit, revise and delete personal data of the Purchaser within the framework of business transactions.

The Purchaser and PENTANOVA GmbH shall be obligated to maintain absolute secrecy in respect of third parties over the knowledge that they receive from the business relationship.

## 17 Area of jurisdiction, applicable law, place of performance

The area of jurisdiction for all disputes arising directly or indirectly from the agreement is the Austrian court with local jurisdiction for the registered office of PENTANOVA GmbH. However, PENTANOVA GmbH may also apply to the court with jurisdiction for the Purchaser.

The Purchaser and PENTANOVA GmbH may also agree to the jurisdiction of a court of arbitration.

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The agreement is subject to Austrian law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 4/11/1980, Federal Law Gazette 1988/96.

The registered office of PENTANOVA GmbH shall be deemed to be the place of performance for delivery and payment, even if a transfer takes place at a different location in accordance with an agreement.