

## Standard Terms of Contract of PSE AG

**Disclaimer:** The following is a **non-binding** translation of the “AGB der PSE AG” furnished to customers for information purposes only. The original German wording shall be binding exclusively in all respects. None of the following shall be relied upon in any dispute between PSE AG and its customers whatsoever.

### **cl. 1 Scope**

These Standard Terms of Contracts (hereinafter referred to as ‘the Terms’) shall apply to any deliveries and performances executed by PSE AG in the fulfilment of contracts with businessmen and entrepreneurs within the meaning of § 14 BGB (Federal Civil Code), with public law bodies incorporated under German law (*Juristische Personen des öffentlichen Rechts*), and separate estates established under public law (*öffentlich-rechtliche Sondervermögen*). Other standard terms of contracts than those used by us shall only form part of the contract if we agree expressly and in writing to their application.

### **cl. 2 Retention Rights**

You may only exercise a right of retention or of set-off if your counter-claims are not disputed by us or have been determined in a legally binding way.

### **cl. 3 Dates and Periods of Delivery**

#### **1.**

For the avoidance of misunderstandings, fixed dates of performance or periods of deliveries shall always be agreed in writing only. All agreed periods of delivery shall, as a rule, commence with the date of completion of the contract. They shall be estopped as long as we have not acquired all information from you that is essential for the performance of the contract. Agreed dates of delivery shall be likewise postponed for a corresponding period.

#### **2.**

We shall only be in default provided that our suppliers supply us in time and according to order. All agreed periods of delivery shall be estopped as long as delivery is inhibited by Force Majeure (Acts of God), war, civil war, fire, water and similar unforeseeable, extraordinary circumstances which are beyond our control, provided that such circumstances occur after completion of the contract, or have occurred before such completion but were unknown to us upon such completion, and further provided that our ignorance of such circumstances has arisen without our own fault. Once the aforementioned circumstances have ceased to assist, agreed periods of delivery shall be further estopped for a reasonable period during which we resume normal business. Agreed dates of delivery shall be likewise postponed for a corresponding period. Should such circumstances arise, we hereby undertake to inform you promptly of the occurrence and foreseeable duration thereof. Should delivery or performance be delayed by more than six months hereby, both parties shall be entitled to withdraw from the contract. You shall be likewise entitled before the expiry of this period if the duration creates an unreasonable hardship for you.

#### **3.**

We shall, in all cases, be entitled to execute delivery by way of reasonable partial shipments.

### **cl. 4 Passing of Risk**

Risks and costs of accidental destruction or accidental impairment shall pass to the customer upon shipment if delivery is effected through a third party shipping company.

### **cl. 5 Customer Obligations Regarding Examination of Products and Notice of Non-Conformity; Liability for Non-Conformity**

#### **1.**

For all contracts within the ambit of these Terms (cl. 1 above), the statutory obligations of § 377 HGB (Federal Commercial Code) with regard to the examination of products and notice of non-conformity by the customer shall apply.

#### **2.**

If you demand supplementary performance of us on account of a defective product, we shall be entitled to determine the mode of such supplementary performance (repair or supply of fresh product). This shall not apply if (1) we maliciously conceal a defect from you, (2) we have expressly guaranteed the quality or condition affected by the defect, or (3) if you can claim redemption from us under § 478 BGB (*Civil Code*).

**3.**

All expenses incurred by us in conjunction with the remedy of defects, in particular transport, travelling expenses, labour cost, cost of material, shall be borne by us, but only to the extent that they are not increased owing to the fact that the products have been relocated to a place other than the place of execution, except if such relocation is in accordance with the ordinary and intended use of the products.

**cl. 6 Liability in damages; Exclusion of Liability**

**1.**

We shall be liable for harm and loss incurred as a result of a wilful or grossly negligent breach of duty on the part of one of our officers (*gesetzliche Vertreter*) or servants (*Erfüllungsgehilfen*). Liability for a grossly negligent breach of duty of a servant who is not one of our managers (*Leitender Angestellter*) shall be limited to damages for foreseeable and typically arising harm or loss.

**2.**

We shall further be liable for the loss of life, injury to body and health arising out of the wilful or negligent breach of duty on the part of one of our officers (*gesetzlicher Vertreter*) or servants (*Erfüllungsgehilfe*).

**3.**

In other cases, liability for damages arising out of a simple or light violation of obligations, or simple or light tortious liability of one of our officers (*gesetzliche Vertreter*) or servants (*Erfüllungsgehilfen*), shall be excluded. The foregoing shall not apply in cases of breach of material obligations whose performance is essential for the realisation of the purpose of the contract, or which arise out of the legitimate reliance on the part of the customer in our own actions or express or implied assurances. In such exceptional cases, our liability shall be limited to damages for foreseeable and typically arising loss.

**4.**

None of the foregoing shall in any way affect or prevent our statutory liability under the Produkthaftungsgesetz (Law on the Liability for Defective Products). Likewise, liability arising out of a guarantee of a specific quality or condition of a product or a guarantee of the acquisition risk shall remain unaffected.

**cl. 7 Limitation of Claims**

Statutory customer claims under the law of sales contracts pertaining to defects in our goods shall be limited to a period of one (1) year from the date of delivery. This shall not apply to claims arising out of a wilful or grossly negligent breach of obligations, for claims for damages concerning the loss of life, injury to body and health, for claims in connection with a guarantee of the quality or condition of a product, for claims in connection with defects that we have maliciously concealed from you, or a legitimate claim arising out of § 478 BGB (Civil Code).

**cl. 8 Reservation of Title**

**1.**

We shall retain the title to our delivered products until payment of all obligations arising out of our entire business connection has been effected.

**2.**

Products the title to which we retain pursuant to para. 1 above may not be sold on by you other than in the ordinary course of business, only as long as you are not in default with your contractual obligations, and only to the extent that your claims against the purchaser are passed to us pursuant to paras. 3 und 4 herebelow.

**3.**

By entering in the contract with us, you assign to us all claims against third party purchasers of products delivered to you in the amount of all obligations owing to us out of our entire business connection. Should such claims be booked into a current account (*Kontokorrent*), you likewise assign to us the resulting net balance, as it may be, in the same amount.

**4.**

If products to which we retain the title pursuant to para. 1 above are sold on to third parties together with products acquired from other suppliers, you assign to us the said claims against the purchaser, or the net balance of a current account in which these are booked, only to a proportion equal to that between the invoice value between the products to which we retain the title and the products acquired from other suppliers.

**5.**

You shall be obliged to treat such products carefully and, in particular, to effect necessary maintenance works and inspections at your own cost. Should possession of the products pass on to third parties, you shall notify us thereof immediately in writing. Should such products be subject of an execution against you, or should they be infringed by third parties in any other way, you shall notify us likewise.

**6.**

If we have lodged a formal complaint (*Interventionsklage*) under § 771 ZPO (*Code of Civil Procedure*) against execution in such products by creditors of yours, and if execution by us against the relevant third party for our expenses incurred in relation to such action remains unsuccessful, you shall be obliged to indemnify us for all costs and expenses arising out of our lodging the complaint.

**cl. 9           Applicable Law**

All contracts entered into hereunder shall be governed exclusively by the laws of the Federal Republic of Germany. The UN Convention on the International Sale of Goods (CISG) shall not apply to any such contracts.

**cl. 10           Jurisdiction**

The sole place of performance shall be determined by our domicile. The sole place of jurisdiction for all claims arising out of, or in relation to, contracts entered into hereunder shall be determined by our domicile (Amtsgericht Freiburg, Landgericht Freiburg etc.).