

PistonPower s.r.o. and PistonPower GmbH**GENERAL CONDITIONS OF SALE AND DELIVERY**

PistonPower s.r.o. and PistonPower GmbH – referred to as 'PistonPower' or 'Supplier'

1. GENERAL

1.1 These Conditions shall apply to all contracts and agreements between PistonPower and the Customer, whether written or oral, for the sale, supply or delivery by PistonPower.

1.2 In case of any inconsistency between the terms and conditions of any quotation, purchase order, acknowledgement or form of contract sent from the Customer to PistonPower, or contained in any other communication between the Customer and PistonPower, or any terms and conditions implied by trade, custom, practice or prior course of dealings, and these Conditions, then these Conditions shall prevail. Additional or alternative terms and conditions shall not apply unless expressly accepted in writing and signed by an authorized representative of PistonPower. Additional, alternative or contradictory provisions contained in any purchase order, acknowledgement or other communication from the Customer are hereby expressly rejected and shall have no binding effect.

1.3 Each purchase order, acknowledgement or form of contract sent from the Customer to PistonPower for the supply of Products and/or Services shall be deemed to be an offer by the Customer to purchase Products and/or Services subject to these terms and conditions. PistonPower may accept or reject any such offer to purchase. Silence on the part of PistonPower shall not constitute acceptance of Customer's offer to purchase.

1.4 The contract takes effect when the Supplier's written confirmation of order is dispatched (per mail or email). Further alterations of the contract require the Supplier's written confirmation.

1.5 The interpretation of the delivery conditions shall be governed by the latest issued edition of the INCOTERMS established by the International Chamber of Commerce.

2. DRAWINGS AND DESCRIPTIONS

2.1 All drawings and technical documents relating to the Product or its manufacture submitted by one party to the other, prior or subsequent to the formation of the contract, shall remain the property of the submitting party. Drawings, technical documents or other technical information received by one party shall not, without the consent of the other party, be used for any other purpose than erection, commissioning operation or maintenance of the Product. They may not without the consent of the submitting party otherwise be used or copied, reproduced, transmitted or communicated to a third party.

2.2 At the start of the period referred to in Clause 8.2 the Supplier shall, if so requested by the Customer free of charge provide information and drawings which are necessary to permit the Customer to erect, commission, operate and maintain the Product. Such information and drawings shall be supplied in the number of copies agreed upon or at least one copy of each. The Supplier shall not be obliged to provide manufacturing drawings for the Product or spare parts.

2.3 Drawings, Sketches, weight data and other documents relating to the offer shall, insofar as they are not expressly specified to be binding, only be an approximate estimate. The right to make alterations in design is reserved. The Supplier retains the property and copyright in estimates of the costs, drawings, photos and any other documentation; access to them may not be given to a third party without the Supplier's explicit consent.

3. DELIVERY, PACKAGING AND PASSING OF RISK

3.1 Any agreed trade term shall be construed in accordance with the INCOTERMS in force at the formation of the contract. The delivery shall be ex-works (EXW). Costs for freight, insurance, risk and other duties shall be borne by the Customer. Unless otherwise agreed upon, the dispatch of the goods shall be performed unpacked. Transport insurance will only be effected at the express wish of the Customer in his name and at his expense.

3.2 In the case of delivery ex-works (EXW), the Supplier, at the request of the Customer, undertakes to send the Product to its destination, the risk will pass not later than when the Product is handed over to the first carrier.

3.3 Partial deliveries shall be permitted provided this is reasonable for the customer and nothing to the contrary has been agreed.

3.4 Insofar as in the country of destination import licenses or other permissions are required, the Customer shall provide the number, date of commission and period of validity of these licenses or permissions when placing the order.

4. PRICE AND CONDITIONS OF PAYMENT

4.1 The Supplier's prices are current prices; they are net ex-works (EXW). The respectively current prices on the day of delivery shall be invoiced. Amounts paid deposit do not count as part of the performance. Cheques do not count as payment until they are cashed. Discount charges and bank charges shall be borne by the Customer. Whatever the means of payment used, payment shall not be deemed to have been effected before the Supplier's account has been fully and irrevocably credited.

4.2 Unless otherwise expressly agreed upon, payment has to be made as follows: Net 30 days after the date of invoice, regardless of the arrival of goods.

4.3 Upon delayed payment the Customer is due to pay interest from due date at a rate of 2% per month. The right to claim compensation for further loss caused by default shall remain unaffected.

4.4 In any case of late payment the Supplier may, after having notified the Customer in writing suspend his performance of the contract until he receives payment. If, by his own fault the Customer has not paid the amount due within three months the Supplier shall be entitled to terminate the contract by notice in writing to the Customer and to claim compensation for the loss he has incurred. The compensation shall not exceed the agreed purchase price.

4.5 The Customer shall not have the right of retention. A set off of counterclaims is only permitted insofar as these counterclaims are acknowledged in writing by the Supplier as existing and due or have been finally determined by an unappealable court decision or arbitration award as legally binding.

5. DELIVERY PERIOD

5.1 Periods of delivery commence upon the date of the Supplier's order confirmation but not before technical and commercial details and the license, which may possibly be required, have been clarified and produced. The delivery period shall be deemed to have been complied with, when notice of readiness for dispatch has been given within the agreed delivery period. Any alterations in the performance of deliveries demanded by the Customer within that delivery period shall interrupt or extend the delivery period accordingly.

5.2 Unforeseeable events entitle the Supplier to defer delivery for so long as the impediment persists plus an appropriate addition period. Unforeseeable events are such circumstances as those, which cannot be avoided by reasonable care due to circumstances in particular cases, such as war, currency and economical or other sovereign measures, civil disturbance, natural event, fire, strikes, lock-outs, non-supply of material arising through no fault of the Supplier, traffic obstructions, interruptions of operations and other events of force majeure (as defined in Clause 9.1), through which the performance of the contract is endangered, made substantially more difficult or rendered impossible. In such cases, the Supplier is entitled to withdraw from the contract without any obligation to pay damages. The Customer may demand a statement from the Supplier as to whether the Supplier will withdraw or deliver within an appropriate period. If no statement is given by the Supplier within a reasonable period of time, the Customer may withdraw from the contract. The Customer may not refuse part deliveries and part performance.

5.3 If deliveries are delayed for other reasons, the Customer shall grant an appropriate extension of time in writing. Upon expiration of such an extension without the goods being dispatched by Supplier, the Customer is entitled to cancel those supplies, which have not been dispatched or declared ready for dispatch prior to the expiration of such an extension.

5.4 If the Customer does not accept the delivery at the agreed date, he shall nevertheless be obliged to pay the purchase price. In such a case, the Supplier shall arrange for storage of the goods at the expense and risk of the Customer.

6. DELIVERY DELAY

6.1 If the Supplier anticipates that he will not be able to deliver the Product at the time for delivery he shall forthwith notify the Customer thereof in writing, stating the reason, and if possible the time when delivery can be expected.

6.2 If the Product is not delivered at the time for delivery, the Customer is entitled to liquidated damages from the date on which delivery should have taken place. The liquidated damages shall be payable at a rate of 0.5 per cent of the purchase price for each completed week of delay. The liquidated damages shall not exceed 7.5 per cent of the purchase price. If only part of the Product is delayed the liquidated damages shall be calculated on that part of the purchase price which is attributable to such part of the Product as cannot in consequence of the delay be used as intended by the parties. The liquidated damages become due at the Customer's written demand but not before delivery has been completed or the contract is terminated.

6.3 If the delay in delivery is such that the Customer is entitled to maximum liquidated damages under Clause 6.2 and if the Product is still not delivered the Customer may in writing demand delivery within a final reasonable period which shall not be less than one week. If the Supplier does not deliver within such final period and this is not due to any circumstance for which the Customer is responsible then the Customer may by notice in writing to the Supplier terminate the contract in respect of such part of the Product as cannot in consequence of the Supplier's failure to deliver be used as intended by the parties. If the Customer terminates the contract he shall be entitled to compensation for the loss he has suffered as a result of the Supplier's delay. The total compensation including the liquidated damages which are payable under Clause 6.2 shall not exceed 15 per cent of that part of the purchase price which is attributable to the part of the Product in respect of which the contract is terminated.

6.4 Liquidated damages under Clause 6.2 and termination of the contract with limited compensation under Clause 6.3 are the only remedies available to the Customer in case of delay on the part of the Supplier. All other claims against the Supplier based on such delay shall be excluded except where the Supplier has been guilty of gross negligence. In these conditions gross negligence shall mean an act or omission implying either a failure to pay due regard to serious consequences which a conscientious Supplier would normally foresee as likely to ensue, or a deliberate disregard of the consequences of such act or omission.

6.5 If the Customer anticipates that he will be unable to accept delivery of the Product at the delivery time he shall forthwith notify the Supplier thereof stating the reason and if possible, the time when he will be able to accept delivery. If the Customer fails to accept delivery at the delivery time, he shall nevertheless pay any part of the purchase price which becomes due on delivery as if delivery had taken place. The Supplier shall arrange for storage of the Product at the risk and expense of the Customer. The Supplier shall also, if the Customer so requires, insure the Product at the Customer's expense.

7. RETENTION OF TITLE

7.1 The Product shall remain the property of the Supplier until paid for in full to the extent that such retention of property is valid under the applicable law. The Customer shall at the request of the Supplier assist him in taking any measures necessary to protect the Supplier's title to the Product in the country concerned. The retention of title shall not affect the passing of risk under Clause 3.1.

7.2 In case the retention of title will be qualified as invalid in the country, to which the goods have been forwarded, such security for the purchase price claim of the Supplier shall be deemed to have been agreed upon, which can be validly stipulated in the respective country and which corresponds as close as possible to the retention of title from the economical point of view. The Customer shall be committed to take and perform all steps and measures insofar actually or legally necessary.

8. WARRANTIES AND LIABILITY FOR DEFECTS

8.1 The Customer shall examine the goods immediately after receipt with reasonable care; defects discovered shall be notified to the Supplier within a preclusive period of 2 (two) weeks in writing. The notice shall contain a description of the defect. If the Customer does not notify the Supplier of a defect within the time-limits set forth in this Clause, he shall lose his right to have the defect remedied.

8.2 The Supplier's liability is limited to defects which appear within a period of 12 months from delivery. If the daily use of the Product exceeds that which is agreed, this period shall be reduced proportionately. When a defect in a part of the Product has been remedied the Supplier shall be liable for defects in the repaired or replaced part under the same terms and conditions as those applicable to the original Product for a period of 12 months.

8.3 In case of a justified immediate notification of defects a warranty will be granted either by repairing the goods (rectification of defects) or replacement of default parts (subsequent delivery) at the Supplier's option. Instead the Supplier shall also be entitled to compensate the decrease in value when obeying the interests of the Customer appropriately.

8.4 If the Customer has given such notice as mentioned in Clause 8.1 and no defect is found for which the Supplier is liable, the Supplier shall be entitled to compensation for the costs he has incurred as a result of the notice.

8.5 The Customer shall at his own expense arrange for any dismantling and reassembly of equipment other than the Product to the extent that this is necessary to remedy the defect.

8.6 Unless otherwise agreed, necessary transport of the Product and/or parts thereof to and from the Supplier in connection with the remedying of defects for which the Supplier is liable shall be at the risk and expense of the Supplier. The Customer shall follow the Supplier's instructions regarding such transport.

8.7 Unless otherwise agreed, the Customer shall bear any additional costs which the Supplier incurs for repair, dismantling, installation and transport as a result of the Product being located in a place other than the destination stated in the contract or - if no destination is stated - the place of delivery.

8.8 Defective parts which have been replaced shall be made available to the Supplier and shall be his property.

8.9 In case the Supplier does not comply to rectify defects or to replace defective parts or the rectification or replacement fails, the Customer shall be entitled to reduce the remuneration or at his option rescind the contract.

8.10 Other or further claims for guarantee are excluded. The same shall apply for any claim of damages that occur as a consequence of harm caused by the defect (consequential damages). In the case of absence of warranted qualities, claims for damages can only be enforced, if it was intended that the warranty given to the Customer should apply precisely to damage of the kind that has occurred.

8.11 The Supplier is not liable for defects arising out of materials provided by or a design stipulated or specified by the Customer.

8.12 The Supplier is liable only for defects which appear under the conditions of operation provided for in the contract and under proper use of the Product. The Supplier's liability does not cover defects which are caused by faulty maintenance, incorrect erection or faulty repair by the Customer or by alterations carried out without the Supplier's consent in writing. Finally the Supplier's liability does not cover normal wear and tear or deterioration.

8.13 All warranty obligations only extend to parts produced by the Supplier. In the case of parts not produced by the Supplier, the warranty is limited to the assignment by the Supplier of guarantee claims against the suppliers of such goods. In such a case, a claim cannot be forwarded against the Supplier unless the enforcement of the assigned claim fails.

8.14 The Supplier's warranty obligations are extinguished, if the goods supplied have been dismantled by a third party or altered by the incorporation of parts produced elsewhere and the cause of the damaged is connection with such alterations. The Supplier's warranty obligation is also extinguished, if the Customer does not duly observe the Supplier's instruction for handling the goods (operational instructions).

8.15 Claims based on warranties are subject to a limited period of 12 months.

8.16 Save as stipulated in clauses 8.1-8.15, the Supplier shall not be liable for defects. This applies to any loss the defect may cause including loss of Production, loss of profit and other indirect loss. This limitation of the Supplier's liability shall not apply if he has been guilty of gross negligence as defined in Clause 6.4. Furthermore the limitation of liability shall not apply in cases of negligent breach of a condition which goes to the root of the contract. In the case of slight negligence the Supplier shall be liable only for reasonably foreseeable damage which is intrinsic to the contract. Nor shall the said limitation of liability apply in the cases of strict liability under the Product Liability Act, for defects of the Product causing death or personal injury, or damage to items of property used privately. Furthermore, the said limitation of liability shall not apply in the absence of expressly warranted qualities if this warranty served the specific purpose of protecting the Customer against damage occurring to items other than the Product itself.

9. FORCE MAJEURE

9.1 Either party shall be entitled to suspend performance of his obligations under the contract to the extent that such performance is impeded or made unreasonably onerous by any of the following circumstances: industrial disputes and any other circumstance beyond the control of the parties such as fire war (whether declared or not) extensive military mobilisation, insurrection, requisition seizure, embargo restrictions in the use of power and defects or delays in deliveries by subcontractors caused by any such circumstances referred to in this Clause which had occurred prior to the formation of the contract, shall give a right to suspension only if its effect on the performance of the contract could not be foreseen at the time of the formation of the contract.

9.2 The party claiming to be affected by Force Majeure shall notify the other party in writing without delay on the intervention and on the cessation of such circumstance. If Force Majeure prevents the Customer from fulfilling his obligations he shall compensate the Supplier for expenses incurred in securing and protecting the Product.

10. GENERAL LIMITATION ON LIABILITY

10.1 Unless otherwise expressly set forth in these General Sales and Delivery Terms and Conditions, the Supplier is only liable for damages, whatever their legal basis is, in case they are based on wilful action or gross negligence of non-managerial staff employed by the Supplier, unless they are in breach of an essential obligation. This limitation on liability shall also apply in case the Supplier is giving advice to the Customer with respect to the goods supplied or their application.

10.2 All claims against the Supplier are time-barred at the latest after the expiration of one year, unless a shorter period is described by law or agreed in these General Terms and Conditions of Sale and Delivery.

10.3 The foregoing provisions shall be without prejudice to the provisions about personal injury or damage on privately used items according to product liability law.

10.4 Save as elsewhere stated in these conditions there shall be no liability for either party towards the other party for loss of Production, loss of profit, loss of use loss of contracts or for any consequential economic or indirect loss whatsoever. The said exclusion of liability shall not apply in the case of gross negligence under Clause 6.4. Furthermore, the exclusion of liability shall not apply in cases of negligent breach of a condition which goes to the root of the contract. In the case of slight negligence the Supplier shall be liable only for reasonably foreseeable damage which is intrinsic to the contract. Nor shall the exclusion of liability apply in the cases of strict liability under the Product Liability Act for defects of the Product causing death or personal injury or damage to items of property used privately. Neither does the said exclusion apply in the absence of expressly warranted qualities if this warranty served the specific purpose of protecting the Customer against damage occurring to items other than the Product itself.

11. PLACE OF PERFORMANCE, JURISDICTION AND APPLICABLE LAW

11.1 In the case of delivery ex works (EXW) the place of performance for the Supplier's delivery shall be the Supplier's premises.

11.2 All disputes arising in connection with the contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules supplemented as necessary by the procedural rules of the law of the country of the Suppliers place of business most closely connected with the contract.

11.3 The place of jurisdiction shall be the seat of the company PistonPower signing the contract. The same jurisdiction shall apply, if the Customer has no domestic general place of jurisdiction or if he transfers his ordinary or customary domestic place of jurisdiction abroad. The Supplier shall be entitled to bring proceedings against the Customer at his place of residence.

11.4 All legal relations between the Supplier and the Customer shall be governed by the law of the country where the company PistonPower signing the contract is located as it is applicable for legal relations of domestic contracting parties. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.