

# General Sales and Delivery Terms and Conditions

## 1. Applicability of the terms and conditions

- 1.1 Deliveries, services and offers of proHeq are made only on the basis of these terms and conditions. At the latest on acceptance of the goods or service, these conditions shall be regarded as having been accepted. Any conflicting conditions or such of the Purchaser's deviating from proHeq's terms and conditions are not accepted by proHeq. The proHeq sales terms and conditions shall also apply if proHeq carries out the delivery to the Purchaser without reservation in spite of knowledge of conflicting terms and conditions of the Purchaser deviating from those of proHeq.
- 1.2 These proHeq sales terms and conditions shall only apply towards entrepreneurs according to sections 14, 310 BGB and shall be applied, if nothing else is agreed, also to all future business with proHeq.

## 2. Offer and conclusion of contract

- 2.1 Orders shall become binding for proHeq through its written or expressed confirmation (also invoice or delivery note). Otherwise, all agreements require proHeq's written approval. The same shall apply for supplements, amendments and side arrangements.
- 2.2 The information, images or specifications contained in catalogues, price lists or in documents which form part of the quotation are approximations customary in the sector unless they are expressly designated as binding in the confirmation of order.

## 3. Prices, payment conditions

- 3.1 The prices are, if not otherwise stated, net prices ex works plus the VAT applicable on the day of delivery excluding packaging, freight, transport and insurance.
- 3.2 proHeq's invoices shall be paid in cash subject to Clause no. 3.3 within 30 days of due date and receipt without any deduction whatsoever. If this payment period is exceeded, proHeq is entitled, subject to the assertion of higher default damages, without a reminder to demand default interest of 5 % over the currently valid base rate pursuant to section 247 BGB. In the case of cash payment within 10 days of the invoice date, proHeq shall grant, if nothing else has been agreed, 2 % discount, under the proviso that previous proHeq invoices have been paid.
- 3.3 Repairs shall be paid immediately without discount. Deliveries and goods in the value of up to EUR 50.00 shall take place by cash on delivery. For stamped goods, half of the sales price shall be paid on placement of order. In this respect, our representative is entitled to accept payments. Otherwise the representative has no right to collection. Payments shall only be regarded as having been made if they are made directly to us.
- 3.4 The acceptance of cheques, bills or comparable means of payment shall take place only for the sake of payment. In this case, the incidental charges shall be borne by the Purchaser.
- 3.5 Should more than four months have elapsed between the conclusion of contract and delivery and proHeq has reduced or increased its prices in general due to altered raw material prices or wages, the new price applicable on the day of despatch shall be charged. If the price is increased, the Purchaser is entitled to withdraw from the contract within 14 days of notification of the price increase.
- 3.6 proHeq reserves the right to use payments for the payment of the oldest invoice items plus the default interest and costs apportioned to these in the following order: costs, interest, main demand.
- 3.7 The Purchaser shall only have the right to set-off if his counter demands have been legally established, are undisputed or are recognised by proHeq.
- 3.8 If, after the conclusion of contract, proHeq gains knowledge of facts concerning a significant deterioration in the purchaser's financial circumstances which according to its best judgement is suited to endanger its claim to counter performance, proHeq can demand an appropriate surety within a reasonable period up to the point of time of payment or advance payments or payment on counter performance. proHeq is also entitled to revoke the payment period granted. If the Purchaser does not meet proHeq's justified demand or does not meet it in good time, proHeq can withdraw from the contract or demand damages instead of payment.

If the Purchaser is in default with a part payment, proHeq can immediately make the complete residual demand due for payment and, in the case of default in payment caused by a significant deterioration in the financial situation, proHeq can withdraw from the contract without setting a period of grace or demand damages in lieu of payment. In the case of default in payment not caused by financial considerations, proHeq can withdraw from the contract after fruitless lapse of a reasonable time period.

## 4. Delivery

- 4.1 Delivery periods are non-binding inasmuch as nothing else has been expressly agreed. Part deliveries are permitted. In the case of agreement on a fixed delivery date, the Purchaser shall, in the case of delay on the part of proHeq, set a period of grace of at least four weeks. If the delivery has not taken place by the end of the period of grace, the Purchaser is entitled to withdraw from the contract.
- 4.2 The delivery period shall commence on the day on which the order confirmation is sent and has been observed when, by the end of the delivery period, the goods have left the works/store or, in the case of shipping being impossible, readiness for despatch has been reported.
- 4.3 The prerequisite for adherence to the periods agreed for deliveries is receipt in good time of all documents, necessary approvals and releases to be obtained and presented by the Purchaser and adherence to the agreed payment conditions and other contractual obligations by the Purchaser. If these prerequisites are not fulfilled in good time, the periods shall be reasonably extended; this shall not apply if proHeq is responsible for any delay.
- 4.4 Call off orders have – inasmuch as no special agreements have been made – to be accepted within six months of proHeq reporting readiness for delivery. After the expiry of this period, proHeq is entitled to demand purchase.
- 4.5 If non-observance of the period is caused by force majeure – no matter whether it has occurred in proHeq's works or at one of the preliminary suppliers – this includes in particular official actions, operational disturbances, labour unrest, delays in the delivery of significant raw or auxiliary materials – or to similar events, e.g. strike or lock-out, the period shall be extended reasonably. If, through the above-mentioned events, the delivery or the service becomes impossible, proHeq shall be released from its duty to deliver without the Purchaser being in a position to demand damages. If the Purchaser is no longer interested in performance due to the delay, he can withdraw from the contract after setting a reasonable period. If the above-mentioned hindrances arise with the Purchaser, the same legal consequences shall apply also for his acceptance duty if he informs proHeq in writing in good time before carrying out the order. The contract partners are obliged to notify the other party without delay of any hindrances of the aforementioned type.
- 4.6 If the Purchaser does not accept the goods, proHeq is entitled, after setting a reasonable period, to withdraw from the contract or to demand damages in lieu of performance. In the latter case, proHeq is entitled to demand either replacement of the actual damage or, without proof of damage, 25% of the purchase price. The Purchaser expressly retains the right to prove that proHeq was only subject to less damage or none at all.
- 4.7 If and inasmuch as the goods to be delivered are not listed in proHeq's catalogue but are only produced for the Purchaser (special design), proHeq also fulfils its contractual duties if proHeq delivers 5% too much or too little of the agreed delivery quantity. In such a case, the Purchaser does not have the right to demand subsequent delivery or to withdraw from the contract. The amount of the invoice to be paid shall be increased or reduced in accordance with the actually delivered quantity of goods.

## 5. Transfer of risk

- 5.1 The risk shall also be transferred to the Purchaser for freight-free delivery if the goods have been handed over to the party entrusted with shipping. This shall also apply in the case of self pick-up and works transport.
- 5.2 For any delays in shipping for which the Purchaser is responsible, the risk shall already be transferred on notification of readiness for shipping.
- 5.3 Shipping shall take place ex works or store for account and at the risk of the Purchaser. proHeq is not liable for damage or losses during shipping. As far as nothing else has been agreed, proHeq shall select the shipping and packaging in accordance with its dutiful discretion. proHeq does not assume any obligation for insurance. On written demand by the Purchaser, the goods shall be insured against transport and other damage.

## 6. Warranty claims due to defects in the delivery

For justified material defects, proHeq shall be liable as follows:

- 6.1 All those products or services which show a material defect within the period of limitation shall be subsequently improved or renewed in accordance at proHeq's option inasmuch as the cause of the material defects already existed at the point of time of the transfer of risk.
- 6.2 Material defect claims shall become time-barred in 12 months unless something else has been expressly agreed in writing. The period shall commence on transfer of risk. The above-mentioned periods shall not apply if, pursuant to German law, longer periods are applicable, e.g. section 479 sub-section 1 BGB (entrepreneur's recourse claim).
- 6.3 The Purchaser shall notify in writing proHeq of obvious material defects without delay after delivery and of undetected material defects without delay after detection. The return of goods without defects shall basically not be accepted and returned to the sender at his expense.
- 6.4 In the case of complaint, the purchaser's payments may be withheld pro rata to the material defects which have arisen. The Purchaser may only withhold payments if a complaint is asserted about the justification of which there can be no doubt. If the complaint was not justified, proHeq is entitled to demand compensation from the Purchaser of any expense which may have arisen for it.
- 6.5 First of all proHeq shall always be given the opportunity for subsequent fulfilment within a reasonable period pursuant to Clause 6.1. The Purchaser shall provide proHeq with the object or sample about which he has objected.
- 6.6 The purchaser shall have no claim for merely inappreciable deviation from the agreed composition, in the case of natural wear and tear or in the case of damage which arises after the transfer of risk as a result of unsuitable or incorrect use, incorrect or negligent treatment, excessive use or unsuitable operating materials. If incorrect modifications or repair work are carried out by the Purchaser or by third parties, there can be no claim for defects for them or any consequences arising from them.
- 6.7 Otherwise, Clause 8 shall apply for claims for damages.

## 7. Impossibility; contract adjustment

- 7.1 Inasmuch as delivery is impossible, the Purchaser is entitled to demand damages unless proHeq is not responsible for such impossibility. However, the Purchaser's claim for damages is restricted to 60% of the value of the goods. This restriction shall not apply if, in the case of intent, gross negligence or due to fatal injury, physical harm or damage to the health, there is compelling liability; any change to the onus of proof to the disadvantage of the Purchaser is not associated with this. The Purchaser's right to withdraw from the contract is not affected.
- 7.2 Inasmuch as unforeseeable events in the terms of Clause 4.5 appreciably alter the economic significance or the content of the delivery or have appreciable influence on proHeq's operations, the contract shall be reasonably adjusted observing good faith. Inasmuch as this is economically not justified, proHeq has the right to withdraw from the contract. If proHeq wishes to take advantage of this right, it shall notify the Purchaser after recognising the extent of the event even of first of all an extension to the delivery period had been agreed with him.

## 8. Claims for damages

- 8.1 proHeq is liable in the case it granted a legal warranty (Beschaffenheits- oder Haltbarkeitsgarantie), pursuant to the Product Liability Act, in cases of intent, gross negligence, due to fatal injury, physical injury or damage to the health or the violation of significant contractual obligations. In the latter case liability is restricted to the maximum amount of the contractually typical foreseeable damage.
- 8.2 Purchaser is not entitled to further-reaching claims for damages on the part of the Purchaser, no matter for which legal reason, in particular due to the violation of obligations under the contract or from non-permitted action. This limitation also applies inasmuch as the Purchaser demands compensation for useless expense in lieu of the claim to damages.
- 8.3 Any change to the onus of proof to the disadvantage of the Purchaser is not associated with the aforementioned regulations.

## 9. Reservation of title

- 9.1 The delivered goods remain the property of proHeq up to the settlement of all claims due to proHeq from the present and future business relation with the Purchaser (reserved goods). Inasmuch as the value of all securing rights which are due to proHeq exceeds the amount of all secured claims by 10%, proHeq shall, at the request of the Purchaser, release a corresponding part of the securing rights. In case of violation of an obligation on the part of the Purchaser, proHeq is entitled to withdraw from the contract without prior notice of a deadline for fulfilment of the contract. The Purchaser is obliged to return the item of purchase without delay.
- 9.2 The Purchaser is entitled to resell the reserved goods within the course of customary business. However, he shall already now assign proHeq all receivables amounting to the total invoice sum of the proHeq claim which result for him from resale on his purchasers or third persons independently of whether the reserved goods have been resold without or after further processing. The Purchaser is entitled to collect these receivables even after assignment. proHeq's authority to collect proHeq's claim itself is not affected by this. proHeq undertakes, however, not to collect the claim as long as the Purchaser correctly meets his payment obligations. If, however, the latter prerequisite is not met, proHeq can demand that the Purchaser reports the assigned receivables and their debtors to proHeq, provides all information necessary for collection, hands over the necessary documents and notifies the assignment to the debtors (third parties).
- 9.3 Any processing or conversion of the reserved goods shall take place for proHeq, as the manufacturer, pursuant to section 950 BGB without binding proHeq.
- 9.4 If goods owned by proHeq are processed with other objects, proHeq shall acquire co-ownership in the new item in the ratio of the current market value of its goods to the other processed object at the point of time of processing.

## 10. Data protection

The Purchaser agrees that his personal data are collected, processed and used inasmuch as necessary for executing the contract in accordance with the German Federal Data Protection Act.

## 11. Prohibition of assignment

Any assignment of claims against proHeq from contracts which have been concluded between proHeq and the Purchaser shall only be valid with the expressed written approval of proHeq.

## 12. Place of jurisdiction, place of performance, applicable law, escape clause

- 12.1 Inasmuch as nothing else evolves from the confirmation of order, Pforzheim is the place of jurisdiction for all contractual rights.
- 12.2 Inasmuch as the Purchaser is a businessman, Pforzheim shall be the place of jurisdiction for all disputes arising from or in connection with this contract; we are, however, entitled to sue the Purchaser at his seat of business.
- 12.3 German law shall apply to the contractual relationships excluding the United Nations Convention on Contracts concerning the International Sale of Goods (CISG).
- 12.4 Should one of the above regulations become ineffective or should a gap in the regulations become apparent, an effective provision shall take the place of the ineffective regulations or fill the gap in the regulation which most closely approaches the economic purpose which had been desired by the parties.