

General Terms and Conditions (Ts&Cs)

Pfeiffer GmbH & Co. KG

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1. Scope

1.1 All deliveries of goods, provision of services and all offers of the seller are exclusively subject to these General Terms and Conditions (hereinafter referred to as "Ts&Cs"), provided the customer is a businessman, a legal person under public law or a special fund under public law. These Ts&Cs are a component of all agreements Pfeiffer GmbH & Co. KG, Emmeliusstrasse 21, 35614 Asslar, Germany (hereinafter referred to as "Pfeiffer"), enters into with its contracting party, (hereinafter referred to as "Customer"), concerning the delivery of goods or provision of services offered by Pfeiffer. These Ts&Cs also apply to all future deliveries, services or offers performed for or submitted to the Customer, even if the applicability of these Ts&Cs are not separately agreed.

1.2 Terms and conditions of the Customer or a third party do not apply, even if Pfeiffer does not specifically object to the applicability of these terms and conditions in individual cases.

2. Offer, Conclusion of an Agreement and Written Form

2.1 If a Customer order is deemed to be an offer, Pfeiffer may accept such offer within a period of two (2) weeks.

2.2 Supplements and amendments to concluded agreements, including these Ts&Cs, require the text form to be effective. Other than the managing directors or "Prokurists" [authorized signatories], Pfeiffer employees are not authorized to verbally agree to terms diverging from the above agreements. Transmission by Fax is sufficient to meet the text form requirement.

2.3 Pfeiffer retains ownership or copyright to all documents or objects (offers, cost estimates, drawings, illustrations, calculations, samples etc.) delivered or provided by Pfeiffer. Without Pfeiffer's express consent, the Customer may not make available to third parties, publish, use, permit use by third parties or reproduce such documents and objects.

3. Pricing and Payment

3.1 Prices apply to the agreed scope of service and delivery as indicated. Any additional, supplemental or special services will be invoiced separately. Prices are in EURO, ex works plus packaging and transportation (including toll fees), statutory VAT, energy surcharge and in the case of export shipments customs duties, as well as any fees and other public charges and levies.

3.2 In the case of a Customer order of less than € 100.- (small order) prorated handling costs of € 10.- are invoiced.

3.3 Granting and deduction of a cash discount requires express agreement between the parties. Deduction of a cash discount is not permitted if receivables of Pfeiffer from past due invoices are outstanding. Payment date is in this context, however, the date on which Pfeiffer has the amount paid by the Customer at its disposal.

3.4 The Customer may only offset with counter-claims or retain payment based on such claims to the extent these counter-claims are uncontested or recognized by declaratory judgement.

4. Delivery and Delivery Dates

4.1 Periods and dates for the delivery of goods or the provision of services by Pfeiffer are only binding, if expressly agreed between the parties. If shipment is agreed, delivery periods and delivery dates relate to the point in time goods are transferred to the shipper, carrier or another third party contracted for transport. The begin of the stated service i.e. delivery period requires the clarification of all technical issues.

4.2 Pfeiffer is not liable for the impossibility of or delay in delivery, if such impossibility of delay is caused by force majeure or by other events that could not be foreseen at the conclusion of the agreement (e.g. disruption of operation of any kind, difficulty to procure material or energy, transportation delays, strikes, lawful lock-outs, lack of manpower, energy or raw materials shortage or missing, incorrect or delayed deliveries from suppliers), provided Pfeiffer is not at fault for such events. Pfeiffer may withdraw from the agreement, if such events render the performance of services or deliveries more difficult to a significant extent or make the performance of services or deliveries impossible and the duration of the impairment is not only temporary in nature. If the duration of the impairment is only temporary in nature, delivery or performance periods / dates are extended or postponed by the period such impairment continues plus a reasonable start-up period. Should it be unreasonable for the Customer to accept the delivery or service due to the delay, the Customer may withdraw from the agreement by notifying Pfeiffer in writing without undue delay.

4.3 Pfeiffer may perform partial deliveries, provided the Customer is able to use such partial delivery within the scope of the contractually agreed purpose, delivery of the remaining ordered goods is ensured, and such partial delivery does not result in significant additional expenses or costs to the Customer.

4.4 In the event Pfeiffer is in default with the performance of a delivery or service or the performance of a delivery or service becomes impossible for Pfeiffer, for any reason whatsoever, Pfeiffer's liability is limited to damages pursuant to Section 7 of these Ts&Cs.

4.5 The Customer undertakes to accept defect free goods and to call ordered goods within the period agreed in the individual agreement. The Customer is in default of acceptance if the Customer fails to accept defect free goods or call ordered goods. In the case of default of acceptance, Pfeiffer has the right to either store the goods at its warehouse and invoice the Customer for incurred storage costs or, after setting a reasonable period, withdraw from the agreement or have the goods sold by auction by way of 'resale on default' [Selbsthilfeverkauf] in accordance with the provisions of the German Civil Code [BGB] and deposit the proceeds from such resale.

5. Place of Performance, Passing of Risk, Acceptance

5.1 Place of performance for all obligations under this agreement is the seat of Pfeiffer, unless provided otherwise. Should Pfeiffer be obliged to perform an installation, place of performance is the location at which the installation is to be performed.

5.2 The risk passes to the Customer upon the transfer of the delivery object to the shipper, carrier or other person or entity designated to perform the shipment. This also applies in the case of partial deliveries or if Pfeiffer has assumed other, additional, services (e.g. shipment or installation). In the event shipment or transfer of the delivery object is delayed as a result of circumstances caused by the Customer, the risk passes to the Customer as of the date the delivery object is ready for shipment and Pfeiffer has notified the Customer accordingly. The Customer bears any storage costs that are incurred after the passing of risk.

5.3 At the request of one party to the agreement formal acceptance is to be performed. If acceptance is not requested, delivery or service is deemed accepted upon the expiry of a period of twelve (12) working days after written notification of the completion of the delivery or service. If acceptance is not requested and the Customer uses the goods or the service or a part thereof, delivery or service is deemed accepted upon the expiry of a period of six (6) working days after the first use of the goods or service, unless agreed otherwise.

6. Defects in Quality, Claims for Defects

6.1 Information on the object of a delivery or service provided by Pfeiffer, as well as illustrations of such object, are decisive, unless the usability for the intended purpose under the agreement requires exact conformity. Such information and illustrations do not represent guaranteed properties as to quality but represent descriptions or characteristics of the goods or service. Customary variations and variations based on statutory requirements or variations that represent technical improvements, as well as the replacement of components by equivalent parts are permissible, provided such variations, improvements or replacements do not negatively affect the usability for the intended purpose under the agreement.

6.2 The warranty period is one (1) year from the delivery date or from the acceptance date in the case acceptance is required. If the law requires longer warranty periods according to Section 439 Para 1 No. 2 (Construction and associated components and materials), Section 479 Para 1 (Right of Recourse) and Section 634 a Para 1 (Construction Defects) German Civil Code [BGB], these periods apply.

6.3 Claims for defects are subject to the condition that the Customer has properly complied with its obligation to inspect and its obligation to give notice of defects according to Section 377 German Commercial Code [HGB]. After delivery or acceptance of the product, the Customer is obliged to inspect the product regarding the product's proper functionality without undue delay and to give Pfeiffer written notice of any identified defects without undue delay, in the case of hidden defects promptly after such defects are identified, at the latest, however, within a period of seven (7) days.

6.4 Should Pfeiffer be responsible for a defect, the Customer may demand damages according to the conditions stipulated in Section 7 of these Ts&Cs.

6.5 Claims for defects do not apply if the Customer modifies or causes a third party to modify the delivery object without Pfeiffer's consent and remedy of defects is rendered impossible or unreasonable by such modification. In any case, the Customer bears any additional costs for the remedy of defects arising from such modification.

6.6 Warranty claims are, at Pfeiffer's option, limited to the remedy of the defect or delivery of a defect-free service or product (subsequent performance). If subsequent performance fails, the Customer has the right, at its option, to reduce the purchase price or withdraw from the agreement.

7. Liability for Damages

7.1 Pfeiffer's liability for damages, based on any legal grounds whatsoever, in particular arising from impossibility of performance, default, defective or incorrect delivery, breach of contract, breach of obligations during contract negotiations (culpa in contrahendo) and tort, is limited according to the provisions of this Section 7, provided such liability is based on fault or negligence.

7.2 Pfeiffer is not liable for simple negligence of its corporate bodies, legal representatives, employees or other vicarious agents, unless essential contractual obligations are violated. Essential contractual obligations are obligations, whose fulfillment is a prerequisite for the proper performance of the agreement and on whose fulfillment the Customer relies on and is entitled to rely on. Essential to the performance of an agreement is e.g. the obligation to timely delivery and installation of the delivery object free from material defects, as well as the duty to consult, the duty to safeguard and the duty to exercise due care, which should enable the Customer to use the delivery object according to the agreement or which are intended to safeguard life or limb of the Customer's employees.

7.3 To the extent Pfeiffer is liable for damages in principle according to Section 7 (2), such liability is limited to damages that Pfeiffer has foreseen as a potential consequence of a breach of contract or which Pfeiffer should have foreseen by applying customary due care. In addition, indirect and consequential damages, as a consequence of defects of the delivery object, are only recoverable, if and to the extent such damages are typically foreseeable damages, if the delivery object is used as intended.

7.4 In the case of a liability for simple negligence, Pfeiffer's obligation to compensate for property damages and resulting additional financial losses is limited to the typical foreseeable damage, at a maximum, however, to an amount of € 5,000,000 per claim and at a maximum € 5,000,000 per annum (according to the current coverage amount of the business liability insurance), even if an essential contractual obligation is violated. At the Customer's request, Pfeiffer will provide the Customer a copy of the insurance policy. In the event the insurer denies a claim for compensation due to a breach of duties by Pfeiffer, Pfeiffer undertakes vis-à-vis the Customer to cover such claims with its own funds up to the coverage amount.

7.5 Exclusions and limitations of liability apply to the same extent for the benefit of Pfeiffer's corporate bodies, legal representatives, employees and other vicarious agents.

7.6 The limitations in this Section 7 do not apply to Pfeiffer's liability for intentional or grossly negligent conduct, for warranties as to quality, for injuries to life, limb or health or pursuant to the German Product Liability Act.

8. Retention of Title, Guarantee

8.1 Pfeiffer retains title to the delivery objects, up to the point Pfeiffer has received all outstanding payments in connection with the business relationship. Pledge or transfer by way of security of goods that are subject to reservation of title is not permitted. Pfeiffer has the right to retake possession of the delivery object if the Customer is in breach of this agreement. Retaking possession of the delivery object includes withdrawal from the agreement. After retaking possession of the delivery object, Pfeiffer is authorized to realize the delivery object, any proceeds from such realization is to be credited to the Customer's liabilities. Reasonable realization expenses are to be deducted from the realization proceeds.

8.2 The Customer is obliged to take good care of the delivery object; the Customer is, in particular, obliged to insure the delivery object against fire and water damages and damages arising from theft. Should maintenance and inspection work be required, the Customer is obliged to perform such works at its own expense and in a timely fashion.

8.3 The Customer may resell the delivery object in the normal course of business; the Customer hereby assigns, however, as security all claims in the amount of the invoice total (including VAT) that the Customer may have against its customers or third parties from such resale, without specific statements being required at a later date. The Customer's authorization to collect this claim remains effective also after the assignment. Pfeiffer's authorization to collect this claim remains unaffected. Pfeiffer undertakes, however, to refrain from collecting this claim, as long as the Customer meets its payment obligations arising from the collected proceeds, the Customer does not default in payment and, in particular, an application for the opening of insolvency proceedings has not been filed. At Pfeiffer's request, the customer is obliged to inform the respective end-customer of this assignment and to deliver to Pfeiffer the documents, invoices etc. and provide the information required for Pfeiffer to assert all of its rights.

8.4 Processing or transformation of the delivery object by the Customer is performed on behalf of Pfeiffer in any case. In the event the delivery object is processed together with objects that are not the property of Pfeiffer, Pfeiffer acquires co-ownership to the new object (thing) proportionate to the ratio between the object of purchase (invoice total amount, including VAT) and the other processed objects at the point in time of processing.

8.5 In the event the delivery object is irreversibly mixed with other objects, Pfeiffer acquires co-ownership to the new object (thing) proportionate to the ratio between the object of purchase (invoice total amount, including VAT) and the other mixed objects at the point in time of the mixture. If the mixture occurs in such a manner, that an object of the Customer is deemed to be the main thing, it is hereby agreed, that the Customer transfers and assigns the proportionate co-ownership to the object. The Customer will keep the sole or co-ownership created in this manner on behalf of Pfeiffer.

8.6 The Customer assigns to Pfeiffer also those claims that arise through the combination of the object of purchase with a real property.

8.7 Pfeiffer undertakes to release securities, which the Customer has provided according to the terms of this Agreement, at the Customer's request to the extent the realizable value of such securities exceeds the value of Pfeiffer's claims, for which security has been provided, by more than ten (10%) percent; Pfeiffer has the right to determine which securities are released.

8.8 In the case of delivery outside of Germany, Pfeiffer may demand that the Customer provides an unlimited, absolute performance bond, governed by German law, of a financial institution licensed in the European Union to secure Pfeiffer's payment claims.

9. Place of Jurisdiction, Governing Law, Final Provisions

9.1 Place of jurisdiction is the seat of Pfeiffer; Pfeiffer may, however, also take legal action before the court at the Customer's seat.

9.2 This Agreement is exclusively governed by the laws of the Federal Republic of Germany under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

9.3 Should a provision be or become ineffective, in whole or in part, this does not affect the effectiveness of the remaining provisions. The same applies should the Ts&Cs fail to address a certain matter.