

# General Terms of Sale and Delivery of PALFINGER Tail Lifts GmbH

## 1. Validity

- 1.1. These general terms of sale and delivery (hereinafter „TSD“) shall be valid for all contracts between PALFINGER TAIL LIFTS GMBH (hereinafter „PALFINGER TAIL LIFTS“) and customers of PALFINGER TAIL LIFTS for deliveries and performances made by PALFINGER TAIL LIFTS (hereinafter „deliveries“).
- 1.2. Our TSD shall be exclusively valid; we do not accept conflicting or differing conditions by the customer, unless we have expressly agreed to their validity in writing. Our TSD shall also be valid, if we conduct the delivery unreserved, although we are aware of conflicting or differing conditions of the customer.
- 1.3. In case of changes, cancellations and/or amendments of single conditions of our TSD the other conditions of our TSD shall remain unaffected. This shall also apply, if one or more condition(s) of our TSD is/are or become(s) invalid.
- 1.4. This TSD shall exclusively apply to entrepreneurs in terms of §14 BGB<sup>1</sup>.

## 2. Offer and Conclusion of the Contract, as well as Content of the Contract

- 2.1. Our offers are subject to change, non-binding and subject to prior sale. With the placing of orders/bids all contracts shall be concluded with the receipt of our written acceptance of order (also per fax:), at the latest with delivery of the goods or with the commencement of the performance by us.
- 2.2. All agreements concluded between us and the customer to execute the contract shall be put into writing in this contract. Decisive for the content of the contract shall be the acceptance of order or our offer accepted by the customer without any reservation, as well as our TSD.
- 2.3. Any by us especially manufactured tools or devices for the execution of order shall not be – if nothing else has been especially agreed – subject matter of the contract.
- 2.4. We shall reserve technical, constructional and creative amendments, especially improvements, also after acceptance of the order, if these are acceptable for the customer.
- 2.5. As far as a description of performance, as the case may be of the product exists from us, through this the characteristics, and the properties of the delivery item shall be concluding and broad determined. The acceptance of a guarantee for these kinds of performance descriptions, illustrations, referrals to DIN standards etc. shall not be assumed in case of doubts. We shall only be able to give independent guarantees or guarantees for properties in writing and with the explicit description as such.

## 3. Prices

- 3.1. As far as our acceptance of order or our offer does not result in something else our prices shall be valid ex works, but exclusive of packaging, loading and dispatch, as well as any other additional costs, which will be charged separately.
- 3.2. Our prices do not include the legal sales tax; it shall be shown separately in the respective lawfully amount on the day the invoice is issued. This shall also apply to duties and other specific country fees.
- 3.3. The agreed prices underlie the current production costs, under consideration of the agreed delivery date. We reserve the right to change our prices accordingly in case of delays in delivery, which are not justifiable by us, if after the conclusion of the contract cost increases, price increases for material or energy take place, which would have not increased our purchase and production costs without the delayed delivery. These shall be proved to the customers by request.

## 4. Payment

- 4.1. As far as our acceptance of order, our quotation or our invoice does not explicitly result in something else, the amounts invoiced shall be paid in cash or with bank transfers, free of costs to one of our accounts within 30 days from due date and receipt of the invoice. If the payment period is exceeded the customer comes into arrears. A cash discount shall require a special written agreement. Payments for assembling, commissioning and repair shall be always due immediately after billing without deduction.
- 4.2. A payment shall only be deemed as effected, if we are definitely able to dispose of the amount. Cheques and bills shall only be accepted for payment due to prior explicit agreements. Due to the acceptance of cheques and bills we shall not take on any responsibility with regard to protesting and timely presentation. All cost or expenses arising from the collection of a cheque or a bill shall be carried by the customer. It shall only be regarded as fulfilled, if the paper has been cashed. Payments with bills shall not entitle to a cash discount. Incoming payments shall pay off the debts in the order of their accrual.
- 4.3. In case of delayed payment the customer shall be obliged to pay default interest yearly in the amount of 8% above the respective base rate, from occurrence of default. We shall reserve the right to prove a higher damage. Deposits or prepayments made by the customer shall be interest free. Irrespective of the rights listed in this TSD the legal rights concerning default of payment and due payment dates shall remain valid. Delivery dates from our side shall be prolonged by the duration of the delay of payment.
- 4.4. If the customer comes into arrears with his obligations to pay or if his property declines considerably, we shall be entitled to refuse further deliveries, to demand that the remainder of the debt shall become due immediately or to demand prepayments or security deposits. If our demand is not fulfilled within a period established by us, we shall be entitled to withdraw from the contract and to claim compensation. In case of a stoppage of payments or excessive indebtedness of the customer we shall also be entitled to these rights without a grace period.
- 4.5. The customer shall only be entitled to the right of charging, if his counterclaims are legally established or indisputable. The right for the customer to recharge or to retain shall be excluded, if they are not based on the same contractual relationship.

## 5. Delivery and Delivery Time

- 5.1. All deliveries shall take place ex works.

- 5.2. Our indicated delivery dates shall only serve as an information for the customer and shall not be binding, if nothing else was agreed by an individual agreement, the delivery takes place 12 weeks after contract conclusion at the latest. Delivery dates, as the cases may be, delivery times shall only be obligatory, if these are expressly described as obligatory by us. We reject the closure of firm deals, so that in case of doubts this is not agreed. The delivery periods mentioned by us shall be deemed as adhered to, if our delivery left our works until the indicated date or the customer was communicated the readiness for shipment.

- 5.3. The begin of the delivery time indicated by us shall require the clearance of all technical questions, the adherence to our obligation to deliver, the timely and orderly fulfilment of the obligation of the customer, also with regard to the adduction of the documents, permissions and clearances he has to supply.

- 5.4. We shall not be liable for delays due to the missing of permissions of authorities.

- 5.5. If the delivery owed by us is delayed or made impossible due to unpredictable circumstances not caused by us, (e. g. due to industrial actions, breakdowns, transport problems, deficiency in raw material due to a contractual breach by our suppliers, official measures, disturbance, war – also concerning our sub-suppliers – as well as not duly supply to ourselves), we shall be entitled to all or part withdraw from the contract or at our own choice to postpone the delivery for the time of the interference. We shall be obliged to inform the customer immediately concern the unavailability of the performance and to compensate the customer for the payments made. If the original agreed delivery time is exceeded by more than a month, the customer shall have the right to withdraw from the contract. Claims for damages shall be excluded.

- 5.6. If the customer gives us an appropriate grace period with a penalty of denial of service, after we came into arrears he shall be entitled to withdraw from this contract after effectless expiry of the period of grace. Claims for damages and charges for claims for compensation due to impossibility and delay of performance/delivery shall be restricted to the amount of the damage predictable at the time the contract is closed. Our liability according to the requirement of the aforesaid shall be excluded in case of simple carelessness, but not if the timely delivery was made a considerable contractual obligation (cardinal obligation). The liability due to intent and the injury of the life, the body and/or the health of a person shall remain unaffected as a whole.

- 5.7. The limitation of liability according to the aforesaid numbers 5.5 and 5.6 shall not be valid, if no expressly commercial firm deal has been agreed; the same shall apply, if the customer can establish, that due to a delay we carry the responsibility for; that his interest in the execution of the contract resulted in discontinuance.

- 5.8. If the customer comes into default of acceptance or if he breaches any other obligation to cooperate, we shall be entitled to demand a compensation for the arising damages inclusive of all additional expenditures.

- 5.9. If the delivery is delayed by demand of the customer, we shall be entitled to charge the delivery, to store it at the expense of the customer and to charge the customer the costs arising from the storage. In case of storage in one of our works we will charge the customer at least 0,5 % of the amount invoiced for every month of the storage.

- 5.10. Part deliveries and/or earlier deliveries shall be allowed. If such part deliveries can be independently used they shall be deemed as an independent delivery for the payment due date.

## 6. Transfer of Risk and Acceptance

- 6.1. In case of delivery ex works the transfer of risk to the customer shall take place at the latest 14 days after receipt of the notice of readiness for dispatch, as far as there were no reasons for not delivering, which were in the sphere of responsibility of the customer.

- 6.2. With all deliveries the transfer of risk to the customer shall take place at the latest, when the delivery left works in Ganderkesee, and namely also if Palfinger Tail Lifts organizes the transport.

- 6.3. On expressive demand of the customer we shall close a transport insurance for the delivery; the insofar arising costs shall be carried by the customer. If the customer comes into default of acceptance or otherwise breaches his obligations for co-operation, the risk of an accidental loss or an accidental decline of the purchased good shall be transferred to the customer in that moment, in which he comes into default of acceptance or violates any other obligation for cooperation.

- 6.4. The delivery item shall be accepted by the customer irrespective of any claims against us, also if it shows insignificant defects.

- 6.5. If in case of agreed delivery ex works, our delivery cannot be made within [7] days after receipt of notice of readiness for dispatch, for reason which lie in the sphere of responsibility of the customer, our delivery shall be deemed accepted in such need for acceptance, if we separately inform the customer about this at the latest at the same time as the notice of readiness for dispatch is given.

- 6.6. If the place of delivery is not one of our works, the customer shall accept our delivery immediately after arrival at the place of delivery. Our delivery shall be deemed accepted 14 days after arrival at the customer, as far as we inform the customer separately about this at the latest at the same time as the notice for readiness of dispatch was given.

- 6.7. If performance verifications should be part of our scope of performance, agreements shall be made concerning this beforehand (see point 2.2)

## 7. Dispatch and Packaging

- 7.1. The packaging of the goods shall be made as customary in the trade and calculated by us at cost price. According to the packaging regulation the packaging shall not be taken back. The customer shall be obliged to arrange for disposal of the packaging at his own expense.

- 7.2. The customer shall not be entitled to make any claims due to insufficient packaging, if the goods were not damaged through this.

- 7.3. If we do not receive any specific demand from the customer, we shall choose the dispatch type sequence, the place of dispatch, the carrier and/or shipper at our own discretion, without taking over the responsibility for the cost saving shipment.

<sup>1</sup> Translator's note: BGB = Bürgerliches Gesetzbuch = German Civil Code

## 8. Reservation of Property Rights

- 8.1. Any items delivered by us shall remain our sole property, until all our requirements inclusive of the receipt of all payments from a revolving account relationship (business connection) with the customer are fulfilled; the exception shall refer to the accepted balance.
- 8.2. Processing, alteration and blending shall always be made for us as manufactures, however without any obligations for us. If our (co) ownership expires due to connection or blending, it shall already now be agreed, that the (co) ownership of the new object shall be passed over to us in relation to the invoice value of our object to the other processed goods at the time of processing. The customer shall keep our (co) ownership for free. Objects, where we are entitled to (co) ownership, shall be called "retained goods" hereinafter.
- 8.3. The customer shall be entitled to process and sell the detained goods in the duly business volume, as far as he does not come into arrears with his obligations to pay us. The authorisation for further sales shall be excluded, in case in the relation between the conditional buyer and its customer a ban of assignment exists. Pledging or transfer of ownership as security lien shall be prohibited. The outstanding bills from resale or a different legal ground (e.g. insurances unlawful acts) referring to the retained goods (inclusive – if a revolving account relationship according to § 355 HGB\* exists – the outstanding bills of an accepted balance, as well as in the case of the insolvency of the customer to the then existing "causal" balance) shall be already now paid by the customer as a precaution to us.
- 8.4. We authorise the customer revocable, to collect for own account to us assigned outstanding book accounts in his own name. The authorisation for collection shall be revocable, if the customer does not orderly fulfil his obligation to pay. In case of a justified revocation the customer shall be obliged to communicate us the debtor of the assigned outstanding book accounts and to notify the debtor(s) immediately about the assignment. The part of the outstanding book account assigned to us shall take priority. This shall especially apply, if the third party objects with a claim for defects to outstanding bills of our customer. Declines and set-off with claims for damages shall be at first charged against the part of the outstanding bills which will not be assigned to us. As far as the customer has agreed a preferential partial assignment, also in favour of other creditors of goods, this numeric shall apply, provided that the buyer is allowed to collect the assigned partial outstanding bill at the same time with those preferential partial outstanding bills.
- 8.5. In case of access of third parties to the retained goods, the customer shall point out our property and inform us immediately.
- 8.6. In case of behaviour of the customer contrary to contract – especially default of payment – we shall be entitled to demand the delivery of the retained goods for the time being, also without a grace period notification at the expense of the customer – by delivery or reshipment to us or, as the case may be to demand the assignment of the obligation to return of the customer against third parties. [The preceding provision shall also apply in the case of a considerable loss of assets by the customer.]
- 8.7. We clear the aforesaid securities be request of the customer at our own choice, as far as its practicable value exceeds our outstanding payments which shall be secured with more than 10 %.
- 8.8. We shall be entitled to insure the retained goods against all sorts of danger at the expense of the customer, if he does not present the closure of such an insurance after the corresponding demand. Claims arising from this insurance shall be paid to us in advance in the amount of the payments we are entitled to with conclusion of the respective contract. We shall be entitled to inform the insurer about assignments.

## 9. Industrial Property Rights

If we have to deliver the customer objects according to drawings, models or samples, which are given to us by the customer, the customer shall guarantee us, that by the production and the delivery or any other marketing of the object (our delivery) no industrial property rights of third parties are violated. Already now the customer shall exempt us from any claims of third parties from or in connection with the valid industrial property rights. In case a third party refers to the copyright or other property rights with regard to the requirement of objects commissioned by the customer, which could concern the production or the delivery, we shall not be obliged to revise the legal situation, but entitled, to stop any further activity and to demand compensation for the costs laid out and the lost profits.

## 10. Liability for Defects

- 10.1. Claims for defects of the customer shall require that he fulfilled his duties to inspect for and give notification of defects according to § 377 HGB. Obvious defects and those which can be detected with an orderly inspection shall be announced in writing within 5 days of receipt of the delivery. Those defects which are not obvious and not detectable during an orderly inspection shall be reported in writing by the customer 5 days after detection at the latest. If the timely notification for defects was not observed any liability for defects for the concerned defect shall be excluded.
- 10.2. Claims for defect shall prescribe – if not differently agreed in writing – 12 months after transfer of the delivery item to the customer. Through a remedy of defects no new limitation period shall be initiated, except with regard to newly assembled parts, as the case may be those whose defects were remedied. The new limitation period shall end however at the latest with expiration of the general limitation with regard to the delivered item.
- 10.3. We shall either deliver such parts in addition free of charge or remedy the defects, which became useless or considerably affected in their usability due to a detected circumstance which took place before the transfer of risk. Such circumstances are especially faulty constructions, bad material or poor executions.
- 10.4. If the costs for the remedy of default should increase due to the fact, that the delivery item was brought to a different place than the place of delivery and if this does not lie in the intended use of the delivery item, the additional costs shall be carried by customer.

Should we only be co-owners of the retained goods, the assignment in advance shall be restricted to that part of the outstanding bill, which corresponds to the share of our coownership (on the basis of the invoice value).

- 10.5. The customer shall be obliged to adhere to his contractual obligations, especially to the agreed contractual conditions of payment. The right of retention for the customer with regard to open payments due to a defect shall only exist in case the defects were reported within the time limit and only in an appropriate relation to the extent of the defect and the retained payment.
- 10.6. The customer shall be obliged to give us an appropriate period for supplementary performance. If he refuses this, we shall be exempted from the liability for defects.
- 10.7. In case we let an appropriate grace period elapse, without carrying out the supplementary performance, or refuse this, or in the case, that the supplementary performance fails twice, the customer shall have the right to cancel or be entitled to reduction.
- 10.8. If the customer wants to demand compensation instead of performance in case of any application of the German labour and transportation and contracts law or to carry at out at his own discretion, a failure of the supplementary performance shall only exist after the second unsuccessful try. The legal cases of dispensability of the deadline shall remain unaffected.
- 10.9. In case of improper maintenance or changes made by the customer or a third party every liability for defects shall be excluded, unless the customer is able to prove, that the defect was not caused by this intervention.
- 10.10. The liability for defects shall not refer to wear and tear from normal use. Furthermore it shall not be valid for those damages arising after the transfer of risk due to faulty or neglectfully handling, extreme wear, inappropriate equipment or such resulting from chemically, electro-chemically or electric magnetically influences, which are not included in the contract.
- 10.11. Claims for defects against us shall be only be made by our direct clients and are not allowed to be assigned. The application of § 478 BGB shall remain unaffected.
- 10.12. Further claims or rights of the customer or their representatives due to defects of the delivery item shall be excluded, especially claims for compensation of damages, which did not occur on the delivery item itself. This shall not be valid for the injury of life, body or health of a person, in case of intent, as well as if the defect causing the damage is the matter of a guarantee agreement between us and the customer or the defect was maliciously kept secret. The provision of § 478 BGB and the liability according to the Product Liability Act shall remain unaffected.
- 10.13. If our product is equipped with fixtures of third party companies and for these fixtures the provisions for the liability of defects of the third party company shall be added to our product, these shall be assumed by us, if and as far as the provisions of the third party company are not more disadvantageous for us than our own TSD; these shall be valid for the rest.

## 11. Liability

- 11.1. If not expressly determined differently in these provisions or the contract underlying the delivery, we shall only be liable for those damages which were caused by us deliberately or through grossly negligent. Differing from the preceding sentence we shall be liable for the violation of considerable contractual obligations, also for simple carelessness. The liability for a violation of main contractual obligations or in case of gross negligence of other liabilities shall be limited to damages typical for this type of contract and predictable damages.
- 11.2. In case of injury of the life, body and health of a person, the liability according to the Product Liability Act and intent our liability shall comply without restriction to the legal provisions. Our liability concerning impossibility [?], as the case may be a delay of delivery/performance shall exclusively comply with numeric 5 of these terms for sale and delivery.

## 12. Processing

The customer agrees to the processing and storage of his personal, as the case may be company related data by us.

## 13. Jurisdiction – Place of Delivery

- 13.1. If the customer is a general merchant, a legal body of the public law or a special property under public law, the exclusive jurisdiction for all disputes arising indirectly or directly from the contractual relationship shall be Oldenburg. Furthermore we shall be entitled to sue the customer at our own choice at his place of general jurisdiction.
- 13.2. If nothing else has been expressly agreed place of delivery for our deliveries and performances, as well as for payments (also made by bills and cheques) shall be Hoykenkamp.

## 14. Applicable law, existing Bonds

- 14.1. The law of the Federal Republic of Germany shall be exclusively valid for the business relations and all legal relations between the customer and us. The application of the uniform law concerning the international purchase of chattel (EKG) as well as the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.
- 14.2. All former terms and conditions for sale and delivery shall be replaced through this.

## 15. Contractual Liabilities

- 15.1. The customer shall only be allowed to transfer rights arising from this TSD to third parties with our consent.
- 15.2. Should single provisions of this contract should be invalid beyond these terms of sale and delivery, the validity of the remaining provisions of the contract shall remain unaffected. The effectless provision shall be replaced by an effective provision which comes nearest to the wanted economic purpose.

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\* Translator's note: HGB = Handelsgesetzbuch = German Commercial Code