

General Terms and Conditions of Sale and Delivery Pero AG

I. Preliminary remarks

1. Pero AG's delivery of machines, machine parts, machine accessories, spare parts and wear parts, and consumables (oil, lubricants, etc.) is performed exclusively on the basis of the following terms and conditions of sale.
2. These terms and conditions of sale shall apply exclusively to entrepreneurs, legal persons under public law and legal entities under public law within the meaning of Section 310(1) BGB (German Civil Code).
3. Conditions of the purchaser which are contrary to or which deviate from these terms and conditions of sale are recognised by Pero AG only if this is expressly agreed in text form. Such an agreement is only valid for the respective individual case, and not for previous or future performance.
4. All contractual agreements made between Pero AG and the purchaser must be made in text form. The same applies to changes or additions to these agreements require. Contractual agreements made separately in text form shall take precedence over these general terms and conditions of sale.

II. Subject of the contract

1. The sole subject of the contract is the delivery or performance of the Pero AG goods defined in the order confirmation.
2. In principle, only those characteristics listed in that order confirmation are deemed to be agreed qualities of the subject of the contract.

III. Offer and contract conclusion

1. A contract is concluded when the order confirmation is sent by Pero AG in text form; in the case of orders for spare parts made by telephone or in writing, a contract is concluded upon execution of the order. Pero AG is entitled to accept the order within two weeks. Any confirmation of receipt sent by Pero AG shall not constitute binding acceptance of the contract.
2. Offers are non-binding and subject to change, including those given in the name of Pero AG. A contract is deemed to have been concluded in a legally binding manner once it has been confirmed by Pero AG in text form, or carried out.
3. If the order confirmation contains a clerical or typographical error, or if the pricing is subject to technical transmission errors, then Pero AG is entitled to appeal. Payments already made by the purchaser will be refunded immediately in this case.

IV. Documents submitted

1. Pero AG reserves all rights of ownership and/or use to all documents submitted to the purchaser within the scope of the placing of orders, e.g. samples, cost estimates, drawings, etc. Such documents may not be reproduced without the written permission of Pero AG, and may not be made available to third parties. Insofar as the contract between Pero AG and the purchaser is not concluded, such documents are to be immediately returned or – at Pero's request – demonstrably destroyed.
2. The purchaser warrants that the transfer of information or documents to Pero AG is not contrary to any third-party rights. The purchaser shall indemnify Pero AG from all claims by third parties asserted as a result of conflicting rights, and shall reimburse Pero AG for all relevant expenses and losses incurred by Pero AG due to claims made by third parties, including the costs of legal defence.

V. Prices and payment

1. The prices stated in the order confirmation shall apply, including packaging for truck transport and loading at the site, though excluding special packaging (e.g. boxes), unloading, commissioning and training. Prices are subject to value added tax at the applicable rate.
2. For contracts for the sale of machines, the following terms of payment shall apply, without any deductions:
 - a. for deliveries to a location within the Federal Republic of Germany:
30 % within 14 days after the date of Pero AG's order confirmation,
60% within 10 days after a successful test run at the Pero AG site, though not before dispatch,
10% after commissioning, though not later than 30 days after delivery.
 - b. for deliveries to a location outside the Federal Republic of Germany:
60% within 10 days after a successful test run at the Pero AG site, though before dispatch
30 % within 14 days after the date of Pero AG's order confirmation,
10% after commissioning, though not later than 30 days after delivery.
3. Invoices for spare parts and other invoices are payable within 14 days after invoicing with a 2% discount, or within 30 days net.
4. The purchaser is deemed to be in default once the contractual payment date has passed without the relevant payment being made. In this case, Pero AG shall be entitled to charge interest at 5% above the base interest rate. The payment of the purchase price must be made into an account given on the relevant invoice.
5. If the purchaser is in default of payment, then Pero AG is entitled – within the same legal relationship – to demand advance payments, and to retain goods which have not yet been delivered, and to refrain from services not yet rendered. This is without prejudice to Pero AG's other rights.
6. The purchaser is entitled to offset only if its counterclaims have been legally determined or are undisputed.
7. The purchaser is authorised to exercise a right of retention only insofar as its counterclaim rests on the same contractual relationship.

VI. Delivery period; delays in delivery

1. The delivery period is based on agreements made in text form by the contracting parties. Compliance with the delivery period requires the timely and proper fulfilment of the purchaser's obligations. This includes, in particular: responding to all technical and other questions of Pero AG; the handing order of baskets; approval of the installation plan; the provision of the necessary official certifications or approvals; and the timely performance of the agreed advance. If the purchaser fails to fulfil its contractual obligations (or does not fulfil them in good time), then the delivery period will be extended by the length of time needed by Pero AG for implementation, taking into account Pero AG's production and other capacities, and the remainder of the time-limited order backlog. The right to lodge an objection due to non-performance of the contract is reserved. This shall not apply if Pero AG is responsible for the delay.
2. Pero AG must send immediate notification of any emerging delays.
3. The delivery period is deemed to have been adhered to if the delivery item has left the Pero AG site before the end of that period, or if there has been notification of readiness for dispatch.
4. If the shipment or acceptance of the delivery item is delayed for reasons attributable to the purchaser, then, beginning one month after notification of readiness for dispatch or acceptance, the purchaser shall be charged the costs incurred as a result of the delay.
5. Delivery takes place subject to the correct and timely delivery by Pero AG's suppliers. This only applies in the event that Pero AG is not responsible for the non-delivery. Pero AG is obliged to inform the purchaser – immediately and in text form – of any non-availability of the services, and to immediately refund any already-paid purchase price in this context.

6. Breakdowns, shortages of energy or raw materials, traffic disruptions – insofar as such events cannot be foreseen – as well as strikes, lockouts, official orders and cases of force majeure, shall exempt the affected party from the obligation to deliver or accept, for the duration of the disturbance and to the extent of its effect. If, as a result, the delivery or acceptance is delayed by more than one month, each of the parties is entitled to withdraw from the contract, with respect to the quantity affected by the disruption to delivery or acceptance.

VII. Delivery; transfer of risk

1. Delivery is FCA (Incoterms 2010) from the Pero AG site. Upon handover to the carrier, the risk of accidental loss of the goods passes to the purchaser. This also applies to partial deliveries, even if Pero AG has taken on other services, e.g. the shipping costs, or delivery and installation.
2. From the following list of carriers, Pero AG will select the most suitable and cheapest, depending on the situation: DPD, Night Star, Go Express, Post/DHL, Schenker, Fieber ,BTG. At the purchaser's request, another carrier may also be agreed.
3. If the purchaser is delayed in its acceptance or payment, then the risk of accidental loss or deterioration of the goods passes to the buyer at the point at which the latter first becomes delayed in its acceptance or payment.
4. Pero AG is entitled to make partial deliveries insofar as this is reasonable for the purchaser.
5. Pero AG shall insure the transport for all deliveries made to the purchaser, at the purchaser's expense.
6. Insofar as we are obliged to take back packaging material (in particular transport packaging) on the basis of the Packaging Ordinance, the Client shall return the corresponding material to the Pero AG premises.

VIII. Retention of title

1. Pero AG retains the ownership of all delivery items until receipt of all payments from the respective contract of sale. This also applies to ancillary services owed.
2. Pero AG's ownership also extends to the new products created by the processing of the reserved goods. The processing is performed for Pero AG as the manufacturer. In the case of the processing, combination or mixing with objects not belonging to Pero AG, the latter shall acquire the co-ownership at the ratio of the invoice value of the reserved goods to the invoice values of the other materials.
3. The purchaser hereby assigns to Pero AG all claims arising from the sale of reserved goods, including bills of exchange and cheques used by way of security for the respective claims under Paragraph 1. Pero AG accepts such assignment. In the case of the sale of goods of which Pero AG is the co-owner, such assignment shall be limited to the portion of the claim corresponding to that which is co-owned by Pero AG.
4. Insofar as the purchaser is willing and able to properly comply with its obligations vis-à-vis Pero AG, it may dispose of the goods co-owned by Pero AG in the ordinary course of business, and may collect the claims assigned to Pero AG. Pero AG undertakes not to collect the claim as long as the purchaser meets its payment obligations from the proceeds, is not in default of payment, and (in particular) no application for the opening of insolvency proceedings has been filed, or payments suspended. If this is the case, Pero AG may demand that the purchaser disclose the assigned claims and their debtors, provide all information necessary for collection, hand over the relevant documents, and inform the debtors of the assignment.
5. The purchaser is obliged to treat the purchased item with care until such time as the ownership thereof has passed to the purchaser. In particular, it is obliged to arrange sufficient insurance (at replacement value) against damage caused by theft, fire, water and other phenomena.
6. The purchaser may neither sell the delivery item before full payment has occurred, nor pledge or transfer ownership thereof by way of security.
7. In the event of the seizure, confiscation or other dispositions by third parties, the purchaser must immediately notify Pero AG, informing the latter of the name and contact details of the third party.
8. If the value of the securities exceeds the claims by more than 10%, then Pero AG will release securities to this extent at the request and discretion of the purchaser.

9. If the purchaser acts in breach of contract, in particular in the case of default in payment, then Pero AG is entitled to withdraw from the contract. Pero AG is authorised to sell the goods having taken them back. The proceeds from the sale are to be offset against the purchaser's liabilities, minus reasonable disposal costs.

10. Paragraph 8 shall apply accordingly in the event of the opening of insolvency proceedings concerning the purchaser's assets.

IX. Warranty and notice of defects

1. Within the scope offered by the law, Pero AG guarantees that the delivered goods display the agreed properties, are free of faults, are suitable for the purpose for which they are intended, and that the legal requirements and other applicable regulations are met.

2. The sale of used machines or other used goods is excluded from the warranty. This does not apply in cases of intent, gross negligence, or personal injury.

3. Warranty rights of the purchaser require that the latter properly fulfils its obligations to inspect and lodge complaints, as per Section 377 HGB (German Commercial Code).

4. Warranty claims for new goods shall become statute-barred 12 months after delivery of the goods to the purchaser. Pero AG's permission is to be obtained before any return shipment of delivered items.

5. The purchaser's claims of recourse against Pero AG shall exist only to the extent that the purchaser has not entered into any agreements with its customer which go beyond the mandatory statutory warranty claims. Section XI also applies accordingly with regard to the scope of the purchaser's claim for recourse.

X. Liability for material defects

1. If, in spite of all the care being taken, the delivered goods contain a defect, the purchaser may – subject to sending prompt notification of the defect – at its discretion and having set a reasonable grace period, demand subsequent performance in the form of the elimination of the defects or the delivery of goods which are free from defects. The implementation of work on the basis of an asserted defect is not linked to any recognition of a material defect or defect claims.

2. Only in urgent cases of danger to operational safety, or in order to avert disproportionately greater damage (whereupon Pero AG is to be notified immediately), is the purchaser entitled to remedy the defect itself or have it remedied by third parties, and subsequently require Pero AG to pay compensation for the necessary expenses.

3. Pero AG shall bear all direct costs incurred in the subsequent improvement or replacement delivery, insofar as the complaint proves to be justified. The costs include the cost of the replacement part, including shipping, the removal and installation of the replacement part, as well as the cost of any necessary provision of fitters and/or auxiliary staff, including travel expenses, unless this results in a disproportionate burden for Pero AG.

4. Claims of the purchaser based on the expenses required for the purpose of subsequent performance – in particular transport, travel, labour and material costs – are excluded, to the extent that the expenses increase because the goods delivered by Pero AG were subsequently brought to a location other than the purchaser's branch, unless doing so complies with the intended use. The undertaking of the necessary work is by no means recognition of a material defect.

5. If the subsequent performance within the meaning of Section 440(2) BGB is unsuccessful, the purchaser is entitled to withdraw from the contract or to reduce the purchase price. This also applies if Pero AG gravely and finally refuses to effect subsequent performance. If the defect is only minor, the purchaser merely has a right to a price reduction.

6. No warranty claims exist only in the following cases, provided that Pero AG is not responsible for them: minor deviation from the agreed characteristics; minor impairment of usability; unsuitable or improper use; faulty assembly or commissioning by the purchaser or third parties; natural wear and tear; faulty or negligent handling; improper maintenance; unsuitable operating materials; defective construction work; unsuitable substrate; chemical, electrochemical or electrical influences.

7. If the purchaser or a third party improperly undertakes subsequent improvements, then Pero AG is not liable for the resulting consequences. The same applies to changes made to the delivery item without Pero AG's prior consent.

8. If the use of the delivery item leads to the infringement of industrial property rights or proprietary legal positions within Germany, Pero AG will, at its expense, arrange for the purchaser to continue to use the item, or will modify the delivery item in a manner acceptable to the purchaser in such a way that the infringement of the right no longer exists. If this is not possible on commercially reasonable terms or within a reasonable period of time, then the purchaser is entitled to withdraw from the contract. Under the above conditions, Pero AG shall also be entitled to withdraw from the contract. In addition, Pero AG will release the purchaser from undisputed or legally established claims of the relevant holders of rights.

9. Claims of the purchaser against Pero AG arising from the protection or violation of copyright-protected items exist only if:

- a) The purchaser informs Pero AG of the asserted violations immediately after becoming cognisant thereof,
- b) The purchaser supports Pero AG to a reasonable extent in the defence of the asserted claims, or enables Pero AG to implement modification measures,
- c) The infringement of rights was not caused by the purchaser independently modifying or using the delivery item in a non-contractual way.

XI. Liability of Pero AG, exclusion of liability

1. Pero AG shall be liable for damage to the delivery item in accordance with the provisions of Section X.
2. With regard to damage which has not occurred to the delivery item itself, Pero AG shall be liable – irrespective of the legal grounds – only:
 - a) In the case of intent or gross negligence,
 - b) In the case of negligent or intentional injury to life, limb or health,
 - c) In the case of a slightly negligent violation of essential contractual obligations,
 - d) As a result of mandatory liability under the German Product Liability Act, or
 - e) As a result of mandatory liability for the fraudulent concealment of defects, as well as for the acceptance of a guarantee. “Essential contractual obligations” are those that protect essential contractual legal positions of the contracting party, which the contract should provide it with via its content and purpose. “Essential contractual obligations” also includes those whose fulfilment enables the proper implementation of the contract, and on whose observance the contracting partner has relied and could rely.
3. The compensation for the gross or slightly negligent violation of essential contractual obligations is however limited to contract-typical, foreseeable damage. Any change in the burden of proof to the detriment of the purchaser is not linked to any of the above provisions.
4. To the extent that Pero AG’s liability is excluded or limited, this also applies to the personal liability of employees, workers, representatives and vicarious agents of Pero AG.
5. The purchaser is obliged to immediately report to Pero AG any damage caused to the products cleaned via the use of Pero AG's machines, and to provide Pero AG with the opportunity – also for evidence reasons – to verify the products’ defects for a connection with the cleaning machine, before the products are shipped to a third party.
6. If, for certain parts, there are concrete requirements with respect to the cycle time and/or cleaning quality, then trials are to be performed at Pero AG's demonstration centre, before the conclusion of the contract. These trials do not relieve the purchaser from its obligation to internally verify compliance with the cleaning requirements, nor from its obligation to carry out regular maintenance in accordance with the operating instructions.
7. A limitation period of one year shall apply to all claims for damages or compensation for futile expenses in the case of contractual or non-contractual liability asserted against Pero AG – except in cases of intent, in the event of personal injury or for claims under the German Product Liability Act. The period begins on the date determined as per Article 199 BGB. It shall enter into force by no later than upon expiry of the maximum periods specified in Article 199 III, IV BGB.
8. Pero AG’s machines are controlled by software. If the purchaser or someone commissioned by the purchaser modifies the supplied software, then all liability claims – of any type – against Pero AG shall expire.

XII. Impossibility

1. The purchaser may withdraw from the contract without notice if it becomes definitively impossible – before the transfer of risk – for Pero AG to execute the entire performance.

The purchaser may also withdraw from the contract if the execution of part of the delivery becomes impossible, and he has a legitimate interest in rejecting the partial delivery. If this is not the case, then the purchaser must pay the contract price attributable to the partial delivery.

2. If the impossibility or inability to perform occurs during the delay in acceptance, or if the purchaser is solely or predominantly responsible for these circumstances, it remains obliged to effect consideration.

XIII. Applicable law; jurisdiction

1. All legal relations between Pero AG and the purchaser shall be governed by the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is not applicable.

2. The competent court at the headquarters of Pero AG is the court of jurisdiction for all disputes arising out of or in connection with the contract. However, Pero AG is entitled to bring an action at the headquarters of the purchaser. If the purchaser has no general place of jurisdiction in Germany or in another EU Member State, then the exclusive place of jurisdiction for all disputes arising from this contract shall be the place of business of Pero AG.

3. The place of performance is Pero AG's place of business.

4. If individual parts of these terms and conditions of sale are or become wholly or partially invalid, incomplete or in need of supplementation, this shall not affect the validity of the remaining clauses.

5. In this case, the parties undertake to agree a provision that is valid, and comes closest to what was economically intended. Loopholes are to be addressed in a similar manner.

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