

General Terms and Conditions of Sale

General Terms and Conditions of Sale of Pankl Racing Systems AG („Pankl“), Industriestraße West 4, A-8605 Kapfenberg, Austria including all Pankl subsidiaries, valid as of August 2017:
The provisions below apply to our deliveries and services – also for follow-up orders in ongoing business relationships – as amended from time to time except appropriate agreements define otherwise.

The following General Terms and Conditions of Sale apply to Pankl Racing Systems AG and its subsidiaries (hereinafter referred to as „Pankl“ or „Pankl Group“):

A. Conclusion and Amendments of Contracts.

1. Customer purchase conditions apply only if we explicitly accept them in detail. Lack of objection may never be construed as our consent.
2. Our offers are always non-binding. Orders awarded to us require our written confirmation to become binding. Amendments and cancellations of awarded orders are subject to our written confirmation.
3. Order cancellations and suspensions require mutual consent. Possible expenses resulting therefrom shall be borne by the purchaser.
4. Contract termination is possible only in the event that Pankl has not commenced order fulfillment activities to any extent. Order fulfillment activities include the start of development and/or production for an order as well as initiated supply orders for materials, forging die and alike.

B. Prices, Payment Terms, Collateral.

1. All prices are net prices plus Value Added Tax at the applicable rate as long as we do not qualify for a tax exemption according to VAT rules. Unless otherwise agreed, all prices shall be deemed ex delivery works or warehouse or dispatch point excluding any expenses for packaging, so that handling and freight expenses are borne by the freight payer. Delivery and shipment shall always be carried out for the account and risk of the recipient even if carriage paid delivery is agreed. The prices valid on the day of delivery and the appropriate number of units or metres established at the delivery plant shall be used for the calculation.
2. Unless otherwise agreed, our invoices shall be paid within 30 days from the invoice date without deductions in cash or cash equivalent, in a way that we can dispose of the invoice amount by the last day at the latest.
3. We reserve the right to demand a collateral for the fulfilment of the payment obligation prior to shipping no matter which payment terms were agreed in the contract. In the case of refusal, we are entitled to cancel the order. Any expenses incurred up to that time shall be invoiced by Pankl.
4. Our trade accounts receivable shall become due and payable immediately if the financial position of the customer deteriorates after conclusion of the contract even in the case of deferred payments. This applies also when payment was made via bills of exchange or cheques.
5. If the customer does not fulfil agreed payment obligations, we shall have the right to withdraw from the contract and to claim damages with regards to business not yet settled and step-by-step delivery transactions. We are not required to grant a grace period. We shall also have the right to refuse delivery for as long as the customer has outstanding financial obligations.
6. For late payments or delayed delivery caused by the customer, we shall be entitled to charge default interest of 1% per month. We shall have the right to credit incoming payments first to outstanding old invoices, even if the customer instructs otherwise. We shall have the right to credit incoming payments first to expenses, then to interest and last to the capital claim.
7. The annual unit numbers as specified by the customer shall be adhered to and ordered within a fluctuation range of +/-10%. If a customer does not order the specified monthly or annual amounts, Pankl shall have the right to demand compensation for raw materials, semi-finished and finished goods which are in stock or have been ordered. Pankl shall also have the right to claim compensation for machinery and personnel which had to be reserved for the customer due to his annual forecast.

C. Intra-Group Settlement.

1. We shall have the right to set off any receivables against the customer against any receivables which the customer has against any company of the group of companies of Pankl Racing Systems Aktiengesellschaft, Kapfenberg no matter on which legal grounds or under which title.

D. Retention of Title.

1. Securing the purchase price claim is a main part of the contract.
2. All goods supplied remain the property of Pankl (reserved goods) until all claims are fulfilled. This shall apply also to balance claims which are due to Pankl for whatever legal reason. This shall also apply if payments are made for specially designated claims.

3. In case our goods are processed, combined or mixed with other products, we shall have the right of co-ownership of the new product in the proportion of the invoice value of our reserved goods compared to the invoice value of the new product. The customer shall store the goods for us free of charge. Our co-ownership rights shall constitute reserved goods as defined in item D2.
4. The customer shall only have the right to sell reserved goods during his normal course of business at his normal terms of business, if he is not in default, provided he agrees with his customer a retention of title and any receivables from the resale according to items D4 to D6 shall become payable to Pankl. When products are resold, Pankl's retention of title shall only expire once the purchase price was paid by the buyer of the customer. The customer shall not be entitled to dispose of the reserved goods in any other way.
5. Customer receivables from the resale of reserved goods shall be assigned to us. Receivables shall provide security to the same extent as reserved goods. The customer is obliged to secure this assignment via an appropriate book entry in his outstanding items list. We shall also have the right to notify the third-party debtors. For verification purposes, the customer is obliged to allow us to inspect his books.
6. If the customer sells reserved goods together with other goods which were not sold by us, then the assignment of the receivable from the resale shall only happen in the amount we invoiced for the resold reserved goods.
7. Items D4 and D5 shall apply for receivables from this contract also if the reserved goods are used by the customer to fulfil a service contract or a contract for labour and materials.
8. Pankl shall have the right to return any components without giving reasons until all receivables are paid. Resulting expenses shall be invoiced by Pankl to the customer separately.

E. Delivery Periods and Dates.

1. The referred delivery periods and dates are non-binding, i.e. not legally binding. Claims for damages of any kind and references to delivery periods are excluded. The customer shall not be entitled to reject partial deliveries.
2. Irrespective of item E1, delivery periods commence with the date of our order confirmation. Delivery periods do not start before all details of the order are clear and all required domestic and foreign certificates are received. The point in time when goods are available to be collected or handed over to the freight forwarder or haulier ex works shall be relevant to determine compliance with delivery periods or dates. Availability for collection shall correspond to the transfer of the goods. If goods are not dispatched in time due to no fault of Pankl, delivery times are still complied with provided notification was made in time that the goods are ready to be collected. Irrespective of our rights resulting from customer defaults, our delivery periods shall extend by the time a customer is in arrears regarding the respective or any other transaction with us. This applies also to delivery dates.
3. Item E2 also applies if delivery periods or dates were explicitly referred to as fixed in the agreement.
4. In the case of force majeure delivery periods extend appropriately and delivery dates are reasonably adjusted. Force majeure includes labour disputes in internal and external plants, transport delays, breakdown of machinery, sovereign actions and other unusual events or events outside of our control. We shall notify the customer immediately of any force majeure event. The customer shall have the right to withdraw from the contract six weeks after receipt of our force majeure notification at the earliest.
5. If acceptance of goods is agreed, this shall be carried out only in the delivery plant immediately after notification that the goods are ready to be inspected. The customer shall bear the personal expenses for the acceptance procedure. Material acceptance costs are calculated using our price list. If the acceptance procedure does not happen, is incomplete or delayed, we shall have the right to ship the goods without acceptance or to store the goods at the customer's risk and expenses. The goods shall be deemed to be transferred in any respect according to the contract once shipment or warehousing is carried out.

F. Measurements, Weight, Quality.

1. Deviations from measurements, weight, quality and other features shall be permitted within the agreed standards, e.g. EN, DIN, ÖNORM etc. or based on common industry practice.

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G. Shipment, Packaging and Transfer of Risk.

1. Pankl shall appoint the freight carrier or haulier unless agreed otherwise.
2. If the customer causes shipping to be delayed, Pankl shall have the right to store the goods at its reasonable discretion at the customer's risk and expenses, take any measures deemed suitable to preserve the goods and invoice the goods as if delivery has taken place. Legal consequences from the delayed acceptance remain unaffected.
3. Transport damages shall be recorded by the customer immediately and a statement of facts shall be filed by the customer with the appropriate authorities.
4. Packaging expenses shall be invoiced separately. There are no refunds for returned packaging materials.
5. Transfer of risk to the customer happens with collection of the goods by the freight carrier or haulier, however, at the latest with the goods leaving the plant or the warehouse. Otherwise, in case there are no arrangements, the Incoterms 2010 in their most recent valid version shall be used to interpret the various sale provisions.
6. The customer shall pay any customs duties or similar fees or taxes.

H. Quality.

1. The quality values defined in the order confirmation shall be relevant for the execution of the order. If in doubt, established industry standards, in particular the standard sheets of the Austrian standards committee shall be applied.
2. The customer shall assure full traceability of our goods, components or systems. If the customer requires Pankl to provide unique serial number labelling, he shall be obliged to attach it in the same way. Otherwise, Pankl shall not be liable for expenses such as sorting costs arising from insufficient labelling including possible claims for damages. This applies in particular to safety-relevant components and/or systems, where faults or failures directly result in danger to life.

I. Acceptance and Inspection.

1. It is at the buyer's discretion to carry out an acceptance procedure at his own expenses at our plant or warehouse. We shall only be obliged to notify the buyer of the time of shipment, if he, at the time of ordering, informed us that he will carry out an acceptance procedure ahead of shipment. If acceptance is not carried out in a timely manner ahead of the scheduled dispatch, shipment shall take place without acceptance.

If acceptance is intended to incorporate special quality requirements, there shall be a dedicated written agreement already at the time of transaction closing. Such acceptance shall take place within 14 days after notification that the goods are ready to be collected. The acceptance may take place either in one of our plants or, at the expense of the buyer, at a domestic state research institute. After expiration of this deadline, the customer shall not have a right to demand acceptance based on special quality requirements. If goods are accepted, they are deemed to be considered approved and any liability on the side of Pankl expires. This applies also to undetected errors provided such errors could have been detected during acceptance.

J. Claims for Defects.

1. The point in time when the goods leave the plant or the warehouse is relevant for the decision whether the goods are in the appropriate condition according to the contract. Whether the goods comply with the contract and are free of defects depends on the explicit contract terms regarding quality and quantity of ordered goods.
2. We must receive a customer complaint in writing no later than 14 days after goods have arrived at the place of destination. Defects which cannot be detected within this time period despite appropriate, professional and most thorough inspection (concealed defects) shall be notified to us immediately after discovery but in any way within three months from receipt of the goods. After expiration of this three-month period we shall not be liable in any way for defects of whatever title for whatever reason. If goods are subject to an agreed acceptance procedure, we shall not be liable for any defects, which are detectable during the acceptance procedure.
3. Complaints regarding measurements and weight shall be notified in writing within 15 days from the delivery of the goods according to item E2. Suitable documentation (report of an internationally recognised surveyor) must be provided.

4. The burden of proof shall always rest with the customer, who shall make sure that goods remain in the same condition as delivered. Any application of rules to shift the burden of proof in connection with claims for defects and damages is hereby expressly waived.
5. There shall be no warranty obligations in particular when defects result from normal wear and tear, inappropriate storage or handling, the impact of an unusual environment, poor maintenance or transport damage. There shall be no warranty obligations for motor racing and development components.
6. We do not provide warranties and any other commitments irrespective of fault or cause with regards to any orders or products unless this is expressly stated and referred to as "Warranty".
7. Pankl shall not accept and shall reject any warranty claims by the customer, which are unjustified or are invoiced without prior agreement.

K. Liability.

1. We shall be liable in accordance with these terms only. Claims for damages due to minor faults, failure to perform or late performance, negligent or grossly negligent violation of subsidiary contract duties, in particular duties to provide advice or to give information shall be excluded. Also claims for consequential damages or harms which may have occurred or lost profits shall be excluded. Under no circumstances shall we be liable for faults of pre-suppliers or other companies which we use to perform our duties.
2. Our liability for claims of whatever nature is limited to the amount covered by our business liability insurance. In addition, in case of violation of contractual duties our liability is limited to the amount of the value of the materials of the appropriate (partial) delivery which was the cause of the damage.
3. The liability limitations above do not apply to bodily harm, claims for personal damages or damages to privately used goods in accordance with product liability law.
4. Under no circumstances shall it be possible that preliminary negotiations can lead to claims for damages against us. Claims relating to *culpa in contrahendo* are excluded. There shall be no liability for advertising statements. Commitments shall only be valid if explicitly stated and accepted in the order confirmation. Our employees, agents and other persons are not authorised to amend these General Terms and Conditions of Sale or to enter into any oral contractual agreements.

L. Other Matters.

1. Any rules and notes by the customer which do not comply with our General Terms and Conditions of Sale shall only be valid if explicitly confirmed by us in writing and shall only apply to the single business transaction for which they are agreed. Absence of objection or silence shall in no way be construed as our consent.
2. We shall have the right to carry out partial deliveries. Resulting additional expenses shall not be borne by the customer, if we are responsible for these expenses. The price remains unchanged. Each partial delivery shall constitute a separate transaction.
3. Development services are part of a major comprehensive project, in which Pankl performs project management, development and management functions in each part of the project both in terms of technical and organisational matters. Hence, these services constitute commercial research and development services in accordance with Chapter 108c Paragraph 2 Item 1 of the Austrian Income Tax Law (EStG) and are as a result subsidised research and development expenses for Pankl.
4. The customer shall inform Pankl immediately and prior to the conclusion of a contract regarding any export restrictions or conditions. The customer shall, in particular, notify Pankl regarding the ECCN (Export Control Classification Number) and any dual use or military use of the goods. In case export licences apply, orders shall have the requirement that appropriate export licences are issued by the Austrian authorities.
5. This Agreement shall be governed by the laws of Austria with the exception of any conflict of laws and reference norms and UN sales and purchase law (application of the UN convention regarding contracts for the international purchase of goods) and any other UNICITRAL sale and purchase laws. Companies of Pankl Group, which are based outside Austria, shall have the right to choose the jurisdiction of their state of residence instead of Austrian law. This shall be notified to the customer.

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6. For any disputes arising out of the business relationships between us and customers who are based in the EU, EEA or Switzerland regarding the effectiveness and legality of the agreement, its interpretations, etc, the competent place of jurisdiction shall be agreed to be the appropriate court of the Leoben province in Austria.

For any disputes between the customer and companies of the Pankl Group which are not based in Austria, but are based in the EU, EEA or Switzerland it may be agreed that the competent place of jurisdiction shall be the appropriate local court of the respective Pankl company. This shall be notified to the customer,

For any disputes between the customer and companies of the Pankl Group which are not based in the EU, EEA or Switzerland the following shall apply: Any disputes relating to the appropriate contracts shall be finally settled by the Rules of Arbitration of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with these rules. The rules regarding accelerated arbitration proceedings do

not apply. The language of the arbitration proceedings shall be German. The arbitration proceeding shall be based in Leoben, Austria.

Pankl shall have the unilateral right to initiate court proceedings at the competent local court where the customer is based. This shall invalidate the place of jurisdiction clause respectively the arbitration clause.

In all these cases the Parties may apply for temporary legal protection at a competent court.

7. Should any provision of these General Terms and Conditions of Sale be or become invalid, such invalidity shall not affect the validity of the rest of these General Terms and Conditions of Sale. The Parties agree that the provision shall be relevant which comes closest to the intentions of the Parties without being invalid. The same shall apply to contract omissions.
8. Deviations from AVB shall only be valid, if specifically agreed in writing.