

GENERAL TERMS AND CONDITIONS

I. Scope of these General Terms and Conditions (“GTC”)

1. Any and all contracts between us (Performtec GmbH, Heinkelstraße 7-9, 73230 Kirchheim unter Teck, Germany) and our contractual partners (“Customers”) as well as any and all declarations made with regard to the conclusion of such contracts are based on our GTC.
2. Deviating conditions of the Customer shall not apply, even if we do not expressly object to them again upon conclusion of the contract. Deviating verbal agreements as well as changes to a contract are not binding unless we acknowledge them in writing.
3. Our offers, price lists and advertising materials are not binding. Orders are only binding for us if we confirm them in writing or comply with them by delivering the ordered products.
4. All information in technical documents, brochures and other printed matter is only approximately determining, as far as it is not expressly designated as binding. We reserve the right to make technical changes according to the latest state of the art.

II. Prices

Delivery and invoicing are based on our basic prices in Euro valid at the time of the sale (plus the statutory sales or value added tax applicable at the time), taking into account the discounts or surcharges for material price increases applicable at the time. If there are more than four weeks between the conclusion of the contract and delivery, we are entitled to add cost increases of raw materials, preliminary products or other increased production costs to the agreed sales price accordingly.

III. Delivery Periods and Dates

1. We will comply with the promised delivery periods to the best of our ability. The delivery period shall be deemed to have been met if the delivery item has left the production site by the end of the period or the Customer has been notified of readiness for dispatch.
2. All promises are subject to the reservation of correct and timely delivery to ourselves.
3. In the case of force majeure and other unforeseeable, exceptional and non-culpable circumstances - e.g. natural disasters, accidents, epidemics, labor disputes, official interventions or general supply and logistical bottlenecks, including energy supply difficulties, etc. – which, in particular, lead to operational or production disruptions, lack of means of transport or material procurement difficulties, even if they occur at our suppliers, the delivery period shall be extended to a reasonable extent if we are thereby prevented from fulfilling our obligations on time. If delivery or performance becomes impossible or unreasonable due to the aforementioned circumstances, we shall be released from our delivery obligation. If the delivery time is extended or if we are released from the delivery obligation, the Customer cannot derive any claims for damages from this.

IV. Transfer of Risk and Dispatch

1. The choice of the dispatch route and the means of dispatch is left to our discretion, subject to special agreement.
2. We are entitled but not obliged to insure the delivery in the name and for the account of the Customer.
3. The risk of loss shall pass to the Customer or the ordering party as soon as we have handed over the item to the forwarding agent, the carrier or any other person designated to carry out the delivery. If we deliver the products with our own vehicle, the risk of loss shall pass to the Customer as soon as the goods are loaded onto our own vehicle. If the dispatch is omitted or delayed for reasons not attributable to us, the risk of loss shall pass on the day on which the Customer was notified of the readiness for dispatch.

V. Dimensions

The dimensions contained in our brochures, price lists, offers and order confirmations correspond to the customary commercial specifications, i.e. they do not have to correspond to the actual dimensions. We make every effort to adhere exactly to the dimensions ordered, but reserve the right to deviations in the dimensions of up to ten percent upwards or downwards; if possible, we take into account tolerances according to the German Industrial Standard (DIN). Deviations do not entitle to a reduction of the purchase price or other claims for defects.

VI. Payment

1. Invoices are due immediately and without deduction upon receipt and delivery.
2. Default of payment and impairment of the customer's ability to pay shall entitle us to refuse performance; § 321 of the German Civil Code (BGB) shall apply in all other respects.
3. In the event of default of payment, interest on arrears shall accrue at a minimum of 9 percentage points above the base interest rate in accordance with § 247 of the German Civil Code (BGB); we reserve the right to claim higher damages.
4. Bills of exchange and checks will only be credited subject to the correct receipt of the full amount. We reserve the right to accept foreign or our own acceptances in any case, whereby it is agreed that in the event of a protest, all current acceptances are to be returned and our underlying claim for goods is due with immediate effect. We do not assume any guarantee for correct presentation and lodging of protests.
5. The Customer's rights of set-off and retention against our claims are excluded, unless the Customer's counterclaims are undisputed or have been finally adjudicated.

VII. Retention of Title

1. We reserve the right of title to the delivered products until the Customer has paid all claims arising from the business relationship and until all checks and bills of exchange given in payment have been fully honored.
2. As long as we are still entitled to claims from the business relationship, the following shall apply: The Customer is entitled to sell, process or consume the products affected by the retention of title in the normal course of business. This entitlement of the Customer shall expire if the Customer is in default of payment; in this case, the products still in stock and those still being received shall be returned to us. The assertion of the retention of title by us shall not be deemed to be a withdrawal from the contract. If any goods subject to retention of title are sold, the Customer's claim to the consideration of his customer in the amount of the gross invoice amount of our delivery shall pass to us without the need for a transfer act when the claim arises. The Customer is entitled to collect claims assigned to us, but must transfer these claims to us without delay; if the Customer fails to do so although he is in default of payment, the Customer's right to collect shall lapse and we shall be entitled to collect claims assigned to us.
3. If the value of the security given to us exceeds all our claims arising from the business relationship by more than 10% in total, we shall be obliged to reassign it at the Customer's request.
4. The Customer is not entitled to pledge the goods or the assigned claims or to assign them as security. We must be informed immediately of any seizures by third parties. The Customer is obliged to insure the goods against fire and theft and to provide us with proof of this on request.

VIII. Warranty and Liability, Statute of Limitations

1. For complaints of defects the obligation to give notice of defects according to § 377 HGB (German Commercial Code) applies.
2. We shall, at our discretion, either repair or replace products which are defective at the time of transfer of risk of loss. Replaced parts become our property. If a second repair or replacement delivery also fails, the Customer may, at his discretion and after setting a reasonable deadline, either reduce the purchase price or withdraw from the contract; however, if the defect is only insignificant, the Customer is only entitled to reduce the purchase price.
3. We only warrant the suitability for a specific purpose if this has been agreed in writing.
4. We do not assume any liability for the fact that the delivery item can and may also be used at the location intended by the Customer. In particular, it is the Customer's responsibility whether the competent authority permits the discharge of waste water when the delivered item is used or whether, if necessary, water treatment is to be carried out. A lack of official approval does not entitle the Customer to withdraw from the contract.
5. The technical information in the product description also includes information on the consumables (such as cleaning substances) to be used as permitted. If materials other than those described there or materials in a different composition are used, any damage arising or caused as a result thereof cannot lead to a claim for damages against us. Any liability in this respect is excluded.
6. In the event of injury to life, body or health resulting from a negligent breach of duty on our part or an intentional or negligent breach of duty by our legal representative or vicarious agent, we shall be liable in accordance with the statutory provisions. The same applies to other damages resulting from a willful or grossly negligent breach of duty by us or our legal representative or vicarious agent. For other damages which are based on the violation of cardinal obligations as a result of slight negligence on our part, on the part of our legal representatives or vicarious agents, liability is limited to the foreseeable damage typical for the contract up to the value of the object of the order. Otherwise liability is excluded. The above exclusions and limitations of liability shall not apply if we have fraudulently concealed a defect or have assumed an independent guarantee for the quality of the delivery item.
7. The statutory provisions shall apply to the limitation of claims arising from section 6 above. All other claims of the customer, in particular warranty rights, are subject to a limitation period of 12 months from delivery of the delivered item.

IX. Place of Performance and Jurisdiction

Place of performance is Kirchheim unter Teck. Exclusive place of jurisdiction is Kirchheim unter Teck. However, we are also entitled to bring an action at the Customer's registered office.

X. Applicable Law

The law of the Federal Republic of Germany applies exclusively. The application of the United Nations Convention on Contracts for the International Sale of Goods (CSIG) is expressly excluded.

XI. Partial Invalidity

Should a provision in these GTC or a provision within the framework of other agreements be or become invalid, the validity of all other provisions or agreements shall not be affected.