

PACELUM Terms and Conditions of Delivery and Works

As of 01.09.2020

1. Applicability of the Terms and Conditions:

- 1.1 These Terms and Conditions shall exclusively apply to all business relations of PACELUM GmbH, Mathias-Brueggen-Strasse 75, 50829 Koeln ("PACELUM") with the Buyer, including all contracts and all deliveries and other services rendered by PACELUM to Buyer. These Terms and Conditions shall also govern any future delivery by PACELUM to Buyer even if not expressly referred to again in the respective contract documents. These Terms and Conditions shall not apply if the Buyer is a consumer within the meaning of Section 13 of the German Civil Code (BGB).
- 1.2 Deviations from these Terms and Conditions shall only become part of the contract on the basis of an express written individual agreement between PACELUM and the Buyer.
- 1.3 Any terms and conditions of the Buyer are hereby objected to and shall not be binding upon PACELUM unless expressly accepted by PACELUM in writing.
- 1.4 Insofar as declarations have to be made in a written form in accordance with these terms and conditions, this is also ensured by any writing (fax, email, etc.).

2. Content of the Contract, Prices

- 2.1 For the content and scope of deliveries and services, the order confirmation of PACELUM shall be binding and shall supersede any other contract documents. Remote data transmission, electronically (E-Mail, etc.) transmitted offers, order confirmations and other contract documents are legally binding without a signature.
For orders placed through our promotion platforms on our website www.PACELUM.com, the provisions in Section 16 of these Terms & Conditions apply additionally.
- 2.2 Deviations in respect of the dimensions, weight, technical design, manufacture and scope of the goods to be delivered shall be permissible within reasonable product-specific tolerance limits. We reserve the right to make minor and reasonable changes to our products with regard to shape, color, material and design.
- 2.3 Any typographical or other obvious error or omission in any quotation, price list, acceptance, invoice or other document issued by PACELUM shall be subject to correction without any liability.
- 2.4 All prices are understood to be subject to addition of the statutory value-added tax applicable on the day of delivery.
- 2.5 Except as otherwise stated under the terms of any quotation or in any price list of PACELUM, and unless otherwise agreed upon in writing between PACELUM and the Buyer, all prices are given on an FCA basis PACELUM' premises (Incoterms 2020), exclusive of the PACELUM's charges for packaging and transport.
- 2.6 If changes with regard to labor costs or procurement costs of materials used in the production of the goods occur between acceptance and execution of the Buyer's order, either by law, regulation, collective bargaining agreement, official recommendation or other measures by the competent authorities or due to changes in world market prices, and more than six months have passed between conclusion and execution, PACELUM shall be entitled to adjust the prices accordingly.

3. Delivery Terms, Default in Delivery

- 3.1 Any delivery date indicated by PACELUM shall be approximate only and time for delivery shall not be of the essence unless expressly agreed upon between the Parties in writing.
- 3.2 Condition for any timely delivery by PACELUM is the due receipt of all specifications, documents, essential approvals and clearances by the Buyer. If essential documents are not made available to PACELUM in due time, the delivery terms shall be reasonably extended to allow PACELUM to make up for the delay. If non-compliance with binding delivery terms is due to force majeure, e.g. mobilization, war, insurrection or similar events, e.g. strike, lockout etc., the delivery terms shall be reasonably extended.
- 3.3 Such a reasonable extension of the delivery terms shall also occur in the event of default in delivery by PACELUM' suppliers.
- 3.4 If, at the Buyer's request or default, delivery is deferred beyond the agreed upon delivery time, PACELUM shall be entitled to charge the Buyer, for every commenced month of delay, a storage charge at the rate of 0.5 % of the total price of the goods for which the delivery is delayed, at maximum 5 % of this price. The Parties shall be free to prove higher or lower storage costs.
- 3.5 PACELUM shall be entitled to deliver by instalments to a reasonably acceptable extent.
- 3.6 If PACELUM fails to comply with fixed dates or periods which have been bindingly agreed, the Buyer shall be obliged to set PACELUM in writing a reasonable grace period for delivery. If PACELUM culpably fails to deliver within the set grace period, the Buyer shall be entitled to rescind the contract.
- 3.7 In so far as PACELUM fails into default of delivery and so far as the Buyer satisfactorily shows that it has incurred a loss as result thereof, the amount of any claim for compensation due to the delay is limited to 0,5 % for every full week of default, but in total no more than 5 % of the price for the delivery or service affected by the delay. The limitation of liability shall not apply, in cases of intent or gross negligence or in so far as PACELUM is mandatory liable on account of injury to life, body or health.

4. Passage of Risk, Delivery

- 4.1 If not expressly otherwise agreed upon in writing between the Parties, all goods shall be delivered FCA PACELUM' premises Arnsberg (Incoterms 2020) at the time when PACELUM notifies the Buyer that the goods are ready for collection.
- 4.2 Within a reasonable period prior to delivery of the goods, the Buyer shall indicate to PACELUM the name(s) of one or more persons who is/are authorized to take receipt of the delivery and sign the delivery note. If none of the authorized persons named by the Buyer is present, or is ready to take receipt of the goods, at the time and place of delivery as specified above, the Buyer shall enter into default of acceptance of the goods.
- 4.3 Risk of damage to or loss of the goods delivered by PACELUM shall pass to the Buyer at the time and place of delivery as specified in Section 4.1 or if the Buyer enters into default of acceptance of goods. This shall also apply in case, upon request of Buyer, PACELUM effects or assists in the transportation of the goods to the designated site of Buyer.

5. Payment Terms

- 5.1 The Buyer shall pay the amount invoiced by PACELUM within 30 days after the date of PACELUM' invoice. Payment shall be deemed effected once the amount is at PACELUM's disposal. If the Buyer fails to pay within the fixed period for payment, it shall enter into default, without a reminder.
- 5.2 Payment shall be effected by interbank payment transaction only; cheques or bills of exchange will not be accepted by PACELUM.
- 5.3 Subject to and under the conditions of an express agreement between the Parties thereof, the Buyer may be also be entitled at his own costs to deliver a letter of credit issued by a major international bank. Such letter of credit must be in accordance with the Uniform Customs and Practice for Documentary Credits, 2007 revision, ICC Publication No. 600.
- 5.4 If the Buyer enters into default for payment, PACELUM shall be entitled to demand default interest at the rate of 9 % p.a. above the respective base interest rate of the European Central Bank from the corresponding time point.
- 5.5 If unpaid invoices and/or outstanding orders exceed the credit limit of the Buyer agreed upon prior to the delivery, PACELUM shall be entitled to demand adequate security for any new purchase order placed with PACELUM and as well for all outstanding orders to the extent the credit limit is exceeded. PACELUM shall be entitled to withhold any delivery until adequate security has been provided by Buyer. If the Buyer fails to provide such security after having been granted a reasonable grace period by PACELUM, PACELUM shall also be entitled to cancel all outstanding deliveries (including accepted and/or confirmed orders) and/or demand prepayment for all future purchase orders.
- 5.6 Section 5.5 shall apply accordingly if other circumstances become known which indicate that PACELUM' claims for remuneration for outstanding deliveries are jeopardized by a deterioration in solvency of Buyer.
- 5.7 The Buyer may only offset claims arising out of goods supplied with undisputed counterclaims that have been recognized by PACELUM or have been determined with legal finality.
- 5.8 Retention of payment by the Buyer in cases having lodged a justified complaint of defects regarding the quality of goods shall only be permitted to an extent reasonably proportionate to the defect in quality which has arisen. A right of retention shall only be available to the customer on the basis of established, undisputed counterclaims recognized by the supplier or in a reciprocal relationship (synallagma) to the main claim. Furthermore, he is entitled to exercise a right of retention to the extent that his counterclaim is based on the same contractual relationship.
- 5.9 The purchaser only has the right of set-off if his counterclaims have been legally established, are undisputed or recognized by us, or if they are in a reciprocal relationship (synallagma) to the main claim.
- 5.10 Credit notes are expressly issued for the purpose of set-off. A claim for payment does not exist.

6. Retention of Title

- 6.1 Notwithstanding delivery and the passing of risk in the goods, or any other provision of these Terms and Conditions, the title and property in the Goods, including full legal and beneficial ownership, shall not pass to the

Buyer until PACELUM has received payment in full for all goods delivered to the Buyer under this and all other contracts between PACELUM and the Buyer for which payment of the full price of the goods there under has not been paid. Payment of the full price of the goods shall include the amount of any interest or other sum payable under the terms of this and all other contracts between the Buyer and PACELUM under which the goods were delivered. PACELUM agrees, at the request of the Buyer, to release at his discretion the latter from the security due to PACELUM under the terms and conditions set out above as soon as the realizable value of the security exceeds the value of the secured purchase price by more than ten percent.

- 6.2 Until such time as the property in the goods passes to the Buyer, the Buyer shall hold the goods as the PACELUM' fiduciary agent and shall keep the goods properly protected and insured.
- 6.3 Until such time as the property in the goods passes to the Buyer, the Buyer shall be entitled to resell or use the goods in his ordinary course of business, but shall account to PACELUM for the proceeds of such sale or use.
- 6.4 If third parties take or threaten to take steps to pledge, seize or otherwise take hold of the goods, the Buyer shall notify PACELUM without delay and shall use his best efforts to prevent such pledge, seizure or other action.

7. Inspection of goods

- 7.1 The Buyer shall not refuse to take receipt of deliveries on account of insubstantial defects.
- 7.2 The Buyer shall be obliged to examine the goods after delivery without delay. The Buyer loses the right to rely on a defect of the goods, including all warranty rights, if he does not notify PACELUM about the nature of the defect within a reasonable time, at latest however two weeks after he has discovered or ought to have discovered it.
- 7.3 Transport-damages and any obvious deterioration of the goods shall be reported to PACELUM within 7 (seven) calendar days after delivery.
- 7.4 Obvious transport damages have to be notified immediately towards the freight carrier. The acceptance of the goods should be refused. The damage shall be noticed on the freight documents (consignment note) and has to be confirmed by a signature of the freight carrier on same document by giving a description of the transport damage as detailed as possible.
- 7.5 The Buyer shall not be entitled to any warranty claims, if the Buyer fails to examine the goods or to notice them to PACELUM or the freight carrier, especially if the notifications received later as stated in these clauses can be rejected by the transport insurance company.

8. Warranty, Taking Back Goods

- 8.1 The Buyer shall not be entitled to any warranty claims in the event of merely insubstantial deviations from the agreed specifications or in the event of a mere insubstantial impairment of usability.
- 8.2 The Buyer shall neither be entitled to any warranty claims in the event of normal wear and tear, in the event of damage or losses arising after the passage of risk due to incorrect or negligent treatment or handling, excessive use, unsuitable operating material, defective constructions or foundations or by reason of exceptional external influences not attributable to PACELUM.
- 8.3 If and to the extent improper alterations to the goods are carried out by the Buyer or by third parties, any defect-

related claims with regard to the respective goods shall cease.

- 8.5 In the event of a justified complaint of defects, i.e. upon the presence of defects in quality which, or whose cause, already existed at the time of passage of risk, PACELUM shall be entitled to provide remedy (elimination of defects) or substitute delivery (delivery of a replacement), at its option.
- 8.6 We shall bear the costs for substitute performance, such as costs for materials, transport, delivery, disassembling of the defective product, assembly and installation works of the new/defect free product, etc. Claims for damages regarding the compliant of defects, i.e. costs for disassembling, installation, assembling, testing into operational use (= "replacement costs") in cases where Assembly Works were originally not to be provided by PACELUM and other claims for damages shall be governed by Section 9.
- 8.7 Installation and removal costs shall only be borne by us if, in accordance with their nature and intended purpose, the item has been incorporated into another item or affixed to another item and we are responsible for the defect which is the cause of the subsequent performance.
- 8.8 If PACELUM delivers a defect-free item for the purpose of substitute delivery, the Buyer shall, upon request of PACELUM return the defective item. This shall apply mutatis mutandis to defective components, if these are replaced with defect-free components within the framework of remedy works by PACELUM.
- 8.9 Any consequences prescribed by law or Section 8.2 with respect to a breach of the duty to inspect the goods and file a complaint in due time after delivery shall remain unaffected by the foregoing.
- 8.10 All warranty claims shall expire with twelve months from delivery. This shall not apply with regard to damage claims based on a violation of life, body or health, or on intentional or grossly negligent conduct.
- 8.11 Return shipment of defect-free goods shall be subject to the PACELUM's prior written consent. If confirmed PACELUM is entitled to charge a flat rate processing fee at the rate of 30 % of the price of the goods. The Buyer shall bear all transportation expenses and risk. PACELUM is entitled to refuse to accept returned defect-free goods if it has not given its consent beforehand.

9. Liability

- Any damage claims of the Buyer arising from or in connection with the contractual relation with PACELUM shall be excluded, except
- in cases where mandatory liability under the German Product Liability Act [Produkthaftungsgesetz] applies
 - in cases of liability for intentional or grossly negligent misconduct by PACELUM or its agents or representatives
 - in cases of liability on account of injury to life, body or health or
 - in cases of liability on account of a breach of material contractual duties by PACELUM. In such case, however, damages shall be limited to the amount typical and foreseeable at the time of the conclusion of the contract.

10. Data Protection, Prevention of Bribery

- 10.1 Buyer's personal data is processed in compliance with the requirements of the General Data Protection Regulation (GDPR). For details see our Privacy Policy.
- 10.2 Buyer shall comply with national law on prevention of bribery, as well as any other law transforming from

ratification of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

11. Force Majeure

- 11.1 If either party is affected by Force Majeure it shall forthwith notify the other party of the nature and extent thereof.
- 11.2 Neither party shall be deemed to be in breach of this Agreement, or otherwise be liable to the other, by reason of any delay in performance, or non-performance, of any of its obligations hereunder to the extent that such delay or non-performance is due to any Force Majeure of which it has notified the other party; and the time for performance of that obligation shall be extended accordingly.
- 11.3 If the Force Majeure in question prevails for a continuous period in excess of 4 weeks, the parties shall enter into bona fide discussions with a view to alleviating its effects, or to agreeing upon such alternative arrangements as may be fair and reasonable and if the Force Majeure in question prevails for a continuous period in excess of a total of 3 months then either party may terminate the delivery contract on giving to the other at least 8 weeks written notice.
- 11.4 "Force Majeure" means, in relation to either party, any circumstances beyond the reasonable control of that party (including, without limitation, any strike, lock-out or other form of industrial action, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, damage or destruction of equipment (including computer viruses), fire, flood or storm).

12. Applicable Law, Jurisdiction, Miscellaneous

- 12.1 The legal relationship between the Parties in connection with this contract shall be governed by the laws of the Federal Republic of Germany, excluding its choice of law provisions and the UN Convention on Contracts for the International Sale of Goods (CISG).
- 12.2 The courts at the seat of PACELUM shall have exclusive jurisdiction for all disputes arising out of or in connection with the legal relationship between the parties in connection with this contract.
- 12.3 Section 12.2 shall not apply with regard to disputes arising out of or in connection with deliveries by PACELUM to the following countries and / or services provided by PACELUM in these countries: Australia, Brazil, Canada, China, Croatia, Hong Kong, Iran, Iraq, India, Japan, Saudi Arabia, Russia, Serbia, Singapore, South Africa, Ukraine, Belarus, United Arab Emirates, United States of America.
All disputes arising out of or in connection with deliveries to or services provided in these countries shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. Place of Arbitration shall be Frankfurt, Germany.
- 12.4 Notwithstanding Section 12.2 and 12.3 PACELUM shall be entitled to also file claims at the competent court at the seat of Buyer.
- 12.5 Unless otherwise stated in the order confirmation, the place of fulfillment for all services and consideration by us and the supplier, including payments, is the head office of the supplier.
- 12.6 If any provision of the contract is, for any reason, invalid

and/or unenforceable, the remaining provisions shall continue to be valid and enforceable to the fullest extent permitted by law. The parties agree to replace an invalid and/or unenforceable provision with a valid and/or enforceable provision which most closely approximates the intent and economic effect of the invalid and/or unenforceable provision.

13. Additional Terms and Conditions for Assembly Works and Services

The following terms and conditions apply additionally with regard to and in case of the provision of assembly works by PACELUM for the Buyer:

13.1 Preparation of Assembly

Condition for the due and timely provision of the assembly works by PACELUM (hereinafter the "Works") is that

- all technical and contractual details and specifications are clarified;
- the Buyer has provided for all necessary constructional, technical and legal conditions for the provision of the Works;
- the Buyer has ensured that the place of assembly is accessible for all necessary machines, materials and equipment;
- the necessary permits of third parties, including municipalities, gas- water and energy suppliers have been granted. The provision of these permits shall be in the responsibility of the Buyer; however, PACELUM is entitled to file necessary notifications to the competent authorities on behalf of Buyer; Buyer shall bear the incurred costs;
- the Buyer has approved and signed the final assembly plan before pre-production and supply of components.

The Buyer has to provide to PACELUM free of charge the coordination of the Works as well as the definition of connections and correlations with the other project members, to the extent they affect the provision of the Works by PACELUM.

13.2 Further cooperation of the Buyer

- 13.2.1 If the Buyer requests special marking of the packaging units, e.g. indicating dimensions, recipient of the goods, information in further languages, etc., the respective labels are to be provided by the Buyer.
- 13.2.2 To the extent not expressly agreed otherwise, the Buyer shall provide the confirmations and certificates required at the project site as well as any necessary import- and export permits. To the extent the respective documents are to be prepared by PACELUM, the Buyer shall notify PACELUM in due time before.

13.3 Acceptance, Passing of Risk

- 13.3.1 If the Works (fully or partly finished) are destroyed or damaged before acceptance by acts of God, war, riots, theft or other inevitable circumstances beyond the responsibility of PACELUM, PACELUM shall be entitled to claim remuneration on a pro rata basis for the parts of the Works that have been completed up to this date.
- 13.3.2 If after completion of the Works, PACELUM notifies the Buyers about their completion and requires their acceptance, the Buyer shall be obliged to declare acceptance within 12 working days after receipt of the notification. The acceptance may only be denied in case of material defects and only until such defects are

remedied. If PACELUM requests, stand-alone parts of the Works shall be accepted separately. Acceptance is declared by signing of the acceptance protocol by both parties, which shall include any defects yet to be rectified.

- 13.3.3 The acceptance shall be deemed to have been declared if the deadline of 12 working days according to Section 13.3.2 above has expired without acceptance by the Buyer even though there are no material defects justifying denial.
- 13.3.4 If PACELUM doesn't expressly request an acceptance declaration, the Works shall be deemed to be accepted upon expiry of six working days after commencement of usage/ operation of the works by Buyer or the end user.
- 13.3.5 The Buyer shall bear all costs caused by delayed acceptance of the Works, including but not limited to costs for storage, insurance, security measures, etc.
- 13.3.6 Upon acceptance of the Works, the risk of loss or damage of the Works shall pass to the Buyer. Section 13.3.1 above remains unaffected.

14. Additional contract terms for orders placed through our promotion platforms (E-commerce)

- 14.1 The offers of PACELUM GmbH presented via promotion platforms on the website www.PACELUM.com are addressed exclusively to contractors as defined by Section 14 BGB. Contractors can be natural persons or legal entities or partnerships with legal capacity acting within their commercial or self-employed professional occupations when concluding a contract with PACELUM GmbH. The offers of PACELUM GmbH is not addressed to consumers as defined by Section 13 BGB. Consumers as defined by Section 13 BGB are natural persons who conclude legal transactions for purposes which predominantly cannot be attributed to their commercial or their self-employed professional occupations.
- 14.2 The presentation of products on the promotion pages of PACELUM's website does not constitute any offer for the conclusion of a contract, but merely an invitation for Buyer to submit an offer for the conclusion of a contract.
- 14.3 By clicking the "Place order" button, Buyer submits an offer to conclude a contract with PACELUM.
- 14.4 Upon submitting the order, Buyer shall receive an automatic order confirmation confirming the receipt of Buyer's order and listing the ordered goods. This order confirmation shall not constitute an acceptance of the order by PACELUM. A contract shall only be concluded upon PACELUM's declaration of acceptance. PACELUM shall declare the acceptance of the order by means of a separate order confirmation which shall be submitted to the Buyer via e-mail within 5 working days of PACELUM's receipt of the order. If Buyer does not receive an order confirmation from PACELUM within the aforementioned time period, PACELUM has not accepted the order and a contract has not been concluded.
- 14.5 The contract text shall be saved by PACELUM and can be requested by Buyer upon conclusion of the order process by means of an e-mail containing a request to said effect. Subsequently, Buyer shall receive an e-mail containing the contract wording.