

# GENERAL TERMS AND CONDITIONS OF PURCHASE

of pentanova gmbh

Status: 10/2019



## 1. Inquiries

Any inquiry made by pentanova gmbh shall be non-binding and shall not commit us to any fee or reimbursement of expenses whatsoever. An offer made the supplier shall be binding and must match the text of the inquiry word-for-word. Any alternative proposal must be submitted separately and contain express references to the normative and linguistic variations. An offer shall have a binding period of 6 months.

## 2. Order confirmations

An order confirmation must be sent immediately to pentanova gmbh's Department of Purchasing & Logistics, with a statement of the order number. If this is not effected within three days from the receipt of pentanova gmbh's order, this shall be assumed to be a tacit, full agreement on the part of the supplier with the content of the order. Only written orders shall be binding on pentanova gmbh. pentanova gmbh shall be bound to deviating prices, deadlines or other terms and conditions only if they have been expressly confirmed. Terms and conditions of the supplier that deviate from the provisions provided by pentanova gmbh shall be acknowledged only if they have been confirmed by pentanova gmbh in writing. Moreover, if there is a deviating order confirmation, a delivery in any event shall be deemed to be an unconditional acknowledgement of pentanova gmbh's Terms and Condition of Purchase.

## 3. Ordering

The following terms and conditions shall apply to our orders, to the extent that nothing else is agreed in this document expressly and in writing. Deviations or differing terms and conditions shall be valid only if pentanova gmbh has expressly acknowledged them in writing. pentanova gmbh maintaining silence with regard to documents sent by the supplier, such as an order acceptance, invoice or other correspondence, shall in no event signify any consent or tacit modification of pentanova gmbh's Terms and Conditions of Purchase. E-mail messages are also to be regarded as in written form. Delivery / fulfilment shall be deemed to be an unconditional and full acknowledgment of pentanova gmbh's Terms and Conditions of Purchase.

## 4. Prices

Only the prices expressly agreed in writing between the supplier and pentanova gmbh shall be valid. Such prices shall be are fixed prices that are valid until the completion of a transaction. In case of doubt (in particular if nothing specific regarding price is governed in the agreement), prices specified in the offer of the supplier, including overtime and customary packaging, delivered to the place of destination, shall be understood to be at the expense and risk of the supplier, including import duties, excluding sales tax, but including all other taxes and duties imposed on the supplier.

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## 5. Scope of deliveries and/or services

The deliveries and/or services to be furnished by the supplier must be carried fully and in such a manner that, at the point of time of ordering, they correspond to the newest state of the art, are like new and of the best quality, and correspond to all statutory provisions, relevant regulations, technical standards and rules of professional associations, etc. applicable in Austria and at the place of performance. Without the express, prior, written consent of pentanova gmbh, excess or shortfall deliveries cannot be accepted.

The scope of deliveries and/or services shall include all customary ancillary services and other components that are necessary to ensure the promised characteristics, particularly with regard to the performance of the subject matter of the order, even if such delivery components and ancillary services are not expressly specified.

## 6. Delivery dates

To the extent that nothing else to the contrary is expressly agreed, all deadlines specified in the order are expressly agreed as fixed dates; i.e., it is expressly agreed that, if the delivery is not to be effected on a specified deadline, pentanova gmbh shall be entitled to withdraw from the agreement without setting a grace period. The notice withdrawal shall be effected to the supplier in writing within 3 business days. If this notice does not take place within the specified period, a reasonable grace period shall be deemed to be set, but this shall amount to a maximum of 14 days. If no use is made of the right of withdrawal, in no event shall this release the supplier from its delivery and service obligations, nor shall this limit or bar any claims for damages. In the event that it is evident, even prior to the delivery date, that the supplier will not be in the position to fulfil the subject order on a proper and/or timely basis, pentanova gmbh shall be entitled to carry out such deliveries/services itself or through a third party, whereas the supplier shall bear the extra costs that arise from this. The supplier shall be obligated to immediately inform pentanova gmbh of all damage compensation obligations, under all circumstances, that are likely to hinder or prevent the timely fulfilment of the performance obligations. In the event of a postponement of a deadline on the part of the customer, there shall be free storage at the supplier's premises for pentanova gmbh. In the event that obligations for pentanova gmbh arise from an order, the supplier shall, on a verifiable and timely basis, urge pentanova gmbh to fulfil such obligations. If this does not occur, the supplier may not invoke the failure to comply with such obligations in the event of a delay.

## 7. Liquidated damages

Liquidated damages: **0.5%** of the total order value per day of the exceeding the deadlines specified as "penalized," up to a maximum of **10%** of the order amount.

Damages that go beyond this may be asserted in amounts that are proven. Claims arising from a deficient performance, unsatisfactory performance or non-performance may be asserted until final acceptance. This shall not affect other exist rights of pentanova gmbh (for example, arising under a warranty).



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## 8. Shipments

A delivery note is to be attached to each shipment, and a clear reference to the subject matter of the delivery for the faultless identification of the shipment upon receipt at the place of destination (in any event, always the order number) is to be provided in the shipping documents. All costs, to the extent that they are related to the failure to provide or improper issuance of the proof of origin or the non-observance of the shipping instructions, such as duties, demurrage, transfer fees or the like, are to be solely borne by the supplier.

The shipping address shall be agreed in the order.

If the billing address is not the same as the delivery address shown in the order, in no event may an invoice be attached to the delivery. The invoice must be sent to the billing address alone.

### Given customs regulations, the following shall apply:

a) For suppliers from the EU region, the following shall apply: upon request, pentanova gmbh is to be issued, without any charge, a legally binding supplier's declaration in accordance with Regulation (EC) No 1207/2001 of June 11, 2001.

b) For suppliers from third countries, the following shall apply: if there is a preferential agreement with the EU for the delivered goods, we assume that this can be applied. In particular, originals of all necessary documents (certificates of preferential origin, declaration of origin) are to be attached to the respective shipment, in order to thereby enable us to import the goods duty-free or at reduced duty. If these certificates are not delivered, or they are delivered late, we shall charge you for the costs that arise from this (customs costs, administrative costs).

c) For all suppliers, the following shall apply: if, on the basis of customer agreements or their execution, the obligation to deliver certificates regarding certain facts, in particular producers, address, country of origin or conformity with the Dual Use Regulation, or applicable embargo regulations, is imposed on pentanova gmbh, the supplier shall assume this for its autonomous and independent completion, on its own behalf and risk and without any claim to a refund. The supplier further confirms that all delivered products are not identified with the "Dual Use Regulation No 3381/94" or any applicable embargo regulations. Thus, export permits shall not be necessary for any exports.

## 9. Deliveries

The goods shall be delivered in such a manner that no unloading expense will accrue for pentanova gmbh. In particular, for deliveries that require a forklift or any other equipment for unloading, the supplier shall make reference to this expressly and in written form. A corresponding note in the order confirmation alone shall not be sufficient.

If non-compliance with this gives rise to any costs, these shall be borne by the supplier.



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## 10. Hazardous goods

If goods to which pertinent provisions of international regulations on hazardous goods apply are delivered under an order, the supplier shall, through the order acceptance, assume responsibility for full compliance with such regulations and for the legal consequences that arise from non-compliance with such regulations. For any hazardous goods delivered under an order, the supplier shall transmit to pentanova gmbh, independent of the stipulated delivery conditions, without any request and on a timely basis prior to the shipment of the goods, the corresponding hazardous goods certificate, completed by the company. An additional copy that is likewise completed by the company must accompany the goods.

## 11. Place of performance

For a delivery and/or a service, the place of destination specified by pentanova gmbh in the order shall apply. The supplier shall bear the risk up to delivery (unloaded completed, placed on a foundation, after completion of assembly, etc.). The address stated in the order shall apply to documentation and payments. The location at which the item is installed shall apply for final assembly checking, commissioning and warranty.

## 12. Acceptance of goods

The acceptance of the goods shall take place first upon the intended use, but at the latest of 24 months after delivery. As such, the supplier shall waive immediate verification along with the objection of the late notification of defects. Any payment on our part shall not signify unqualified acceptance of the goods.

## 13. Billing

For each order, the invoice is to be sent separately to our accounting department, with a statement of the order number, after the complete delivery or service, and is not to be attached to the shipment (see item 4). The supplier shall be obligated to issue an invoice that corresponds to sales tax law. The term of payment on the basis of the agreed conditions shall commence on the date of the arrival of the invoice that conforms to the agreement, but never prior to complete fulfilment. The supplier further notes that incorrectly issued and/or incomplete shipping documents and/or certificates and/or documentation will lead a postponement of payment. Bank transfer fees shall be borne by the supplier. If the goods are delivered prior to the agreed deadlines, which requires our consent, the payment periods for the relevant invoices shall begin to run only from the agreed delivery date. Payment shall take place after the receipt of the goods and the receipt of the proper and verifiable invoice, if not otherwise agreed, with a 3% discount within 30 days, with a 2% discount within 60 days or net within 90 days. If an advance payment was contractually agreed, payment shall take place in any event only after the presence of the legally valid order confirmation of the supplier, signed without reservation.

If there is a defect, we shall be entitled to postpone payment until the proper remedy of the defect.

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## 14. Guarantee

The supplier guarantees and warrants the usability of the goods for their intended purpose, their good quality and the fulfilment of the promised characteristics for the duration of two years after the use of the goods for their intended purpose, but for no longer than three years after delivery, unless otherwise agreed. The supplier shall be obligated to, at its own expense, immediately remedy any defect that arises within this period of time and provide compensation for all damages related to the defect, including the costs of the determination of the defect, etc.

pentanova gmbh shall determine the place of performance for the remedy of defects pursuant to the guarantee / warranty obligation. This shall not affect statutory provisions that go beyond this. In those cases in which the supplier does not immediately comply with its guarantee / warranty obligation upon request, even with slight defects and also in cases of special urgency, pentanova gmbh shall be entitled to, at the expense of the supplier and without further inquiry, itself remedy the defect or have it remedied by a third party or, if this is not possible, otherwise obtain a replacement.

pentanova gmbh reserves the right to, instead of improvement, assert the statutory right to conversion or a reduction in price. The supplier shall compensate us for the damages that arise due to any defective delivery.

If, as the manufacturer of the final product, pentanova gmbh incurs any liability that is attributable a defect in the raw material or sub-product delivered by the supplier, the supplier shall indemnify pentanova gmbh from any such liability and render full redress, regardless of any fault.

## 15. Protection of plans and documents / secrecy

Plans, sketches, layouts, descriptions, parts lists and other documents, such as brochures, catalogues, models, presentations, and the like, that are made available by pentanova gmbh shall remain the intellectual property of pentanova gmbh. Our express consent is required for any use of such materials, in particular any transfer, duplication, publication or handing over, including any copying in excerpts.

All of the above documents may be reclaimed at any time, and, if the agreement does not come into force, are to be immediately delivered back, without any request.

In all other respects, the supplier shall be obligated to maintain secrecy in respect of third parties over the knowledge that it receives from the business relationship.

If documents or services created by the supplier enjoy legal protection, including copyright protection, and are made available to us, the supplier shall grant to us, in the event of the conclusion of the agreement, in the absence of an express agreement to the contrary, an unrestricted but non-exclusive right of use to such works, or such a right of use shall be deemed to be agreed.

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## 16. Set-offs

A prohibition on set-offs is not acknowledged by pentanova gmbh; rather, pentanova gmbh shall be entitled to set off all claims to which we our entitled against the supplier.

## 17. Form requirements

For their validity, all agreements, subsequent amendments, supplements, side agreements, etc. require written form, thus original signatures or secure electronic signatures.

For their legal effectiveness, declarations, notifications, etc. addressed to pentanova gmbh require written form, thus original signatures or secure electronic signatures.

## 18. Retention

In no event shall the supplier be entitled to, for whatever reason, delay or hold back its services. The supplier shall also not be entitled to a right of retention regarding the items provided by pentanova gmbh.

## 19. Industrial property rights

The supplier declares that the deliveries or services that take place on the basis of an order of pentanova gmbh shall not violate the industrial property rights of any third party. If a claim is made against pentanova gmbh from an infringement of industrial property rights in connection with the subject order, the supplier shall hold harmless and indemnify pentanova gmbh.

## 20. Choice of law / area of jurisdiction

Austrian substantive law is to be applied to this agreement; the applicability of U.N. sales law is barred.

The court with substantive jurisdiction at the registered office of pentanova gmbh shall have local jurisdiction to decide on all disputes arising from this agreement. However, we shall have the right to bring suit at the general area of jurisdiction of the contracting partner.

