

General Terms and Conditions of Purchasing of the PALFINGER Tail Lifts GmbH (GTP)



1. Validity of the Terms and Conditions of Purchasing

1.1 For this order and all future businesses from the current business connections the following general terms and conditions of the ordering party shall be applicable. We do not accept any terms and conditions contrary or differing to our terms and conditions of purchasing, unless we have expressly agreed to their validity in writing. Our terms and conditions of purchasing shall also apply, if we are aware of terms and conditions different to or differing from our terms and conditions, deliveries, as the case may be part deliveries, as well as the acceptance of payments of the contractor without any reservations. An explicit refusal of the differing terms and conditions of the contractor shall not be necessary.

1.2 Oral agreements shall require a written confirmation to become legally valid. The requirement for written form can not be disclaimed orally.

1.3 Our terms and conditions of purchasing shall only be valid for merchants in terms of § 310 section 1 BGB¹.

2. Orders

2.1 Orders shall be only binding for us in writing. Orders made orally or telephonically shall require a written confirmation to become valid.

2.2 The acceptance of order in form of the countersigned order copy shall be immediately given back to the ordering party, but at the latest within 14 days after receipt of the order.
If the acceptance of order is not received in due time, anyhow the content of the order according to the acceptance of order shall be valid, if we do not cancel our order.

2.3 Differing declarations of the contractor to those made by the ordering party in its orders shall be made in a separate written notification by the contractor or it shall be clearly marked on the acceptance of order. Additional costs arising from additional amendments of the order shall be carried by the contractor.

3. Delivery Dates

3.1 The delivery dates mentioned in the order shall be binding. Advanced deliveries shall be only acceptable with the consent of the ordering party and at the agreed date for issuing the invoice. In case of delay of the delivery date the contractor shall inform the ordering party immediately.

3.2 If the agreed delivery date is exceeded, due to reasons, which lie in the responsibility of the contractor, the ordering party shall be entitled to withdraw from the contract after an appropriate period of grace. If the contractor is responsible for the delay, the ordering party shall also have the right at its own choice, to claim damages after the expiration of an appropriate period of grace, inclusive of all consequential harm caused by defect and/or to demand fulfilment, also in case of possible unreserved acceptance of agreed part deliveries. The ordering party shall be entitled to this right, if only part of the contract is concerned, at its own choice for this part or the whole contract. Irrespective of his liability the contractor shall be obliged to inform the ordering party immediately in writing, if circumstances arise or are noticed by him, which result in the fact that the delivery dates can not be adhered to. If the ordering party adheres to the contract despite the delay, the contractor shall carry all costs resulting from the delay.

3.3 Instead of making use of the rights mentioned in numeric 3.2, the ordering party shall also be entitled to demand a contractual penalty from the contractor for a delay in delivery he is responsible for, in the amount of 1% of the contract amount of the single order for each commenced week (as the case may be of the connected business), however as a maximum 10% of the single order (as the case may be of the connected business).

4. Dispatch

4.1 The delivery shall take place carriage free for the ordering party to the indicated place of delivery. The place of delivery, as the case may be place of destination indicated by the ordering party shall be deemed to be the place of delivery for the deliveries made by the contractor. A delivery shall only be deemed as completed, if the receipt through the ordering party is confirmed to the contractor or his agents in writing.

4.2 Dispatch papers, such as delivery notes, packing slips and so on shall be placed in duplicate in the sending. The order numbers and the marks of the ordering party demanded by the order shall be indicated in all documents. At the latest on the day of dispatch the ordering party shall receive a delivery note (in duplicate) for the goods to be dispatched. If a delayed receipt of the documents, as the case may be missing information on the documents, cause additional storage costs, these shall be carried by the contractor. Delays in the inspection and

order to pay shall not be carried by the ordering party. Packing slips and invoices shall not be deemed as a notification of dispatch.

4.3 Deliveries shall be marked as an entire delivery, part delivery and/or final delivery.

4.4 The delivery items shall be packed appropriately. Those losses or damages arising from inappropriate packaging of the dispatch shall go to the account of the contractor. If a dispatch is delivered in damaged packaging, the ordering party shall be entitled to send the dispatch back at the expense of the contractor, without inspection of the content.

4.5 The costs for the packaging and the packaging material shall be carried by the contractor. The contractor shall agree to take back all packaging at the place of delivery by request of the ordering party. The return of empties, packaging material and chargers shall take place carriage forward at the expense of the contractor. The special regulations of the container traffic shall remain unaffected.

4.6 The delivery of goods shall exclusively take place through the department receipt of goods, so the duly payment of the invoice can be guaranteed.

5. Guarantee

5.1 The acceptance of the delivery shall take place subject to reservation of all rights, especially for the claims for defects from faulty and/or delayed delivery.

5.2 The contractor shall adopt the guarantee, that his delivery or performance has the agreed properties, at the time of the transfer of risk, and if no properties were agreed, the object is suitable for the assumed use according to the contract and if it can not be used for the usual application, to show a property, which is usual for objects of the same type and which can be expected by the ordering party for that kind of object. These properties shall also include those, which can be expected by the ordering party, due to public statements made by the contractor or his agents, especially in advertisements or in the marking of certain properties of the object, unless the contractor was not aware of the statement and did not need to be aware of the statement, that it was corrected in an equivalent way at the date the contract was closed or that it was not able to influence the purchase decision. The period for the inspection and the objection to the goods shall be 12 months from receipt of the goods. The reproof of defects which also include excess and short deliveries, by notification of the contractor shall be deemed as timely according to § 377 HGB², if it is sent within the above mentioned period within one month after detection of the defect. The period for the limitation of claims for defects shall be 12 months after dispatch of the notification, at least however 24 months from delivery of the goods.

5.3 The disbursements for the remedy, as the case may be replacement, as e.g. transport costs, tolls, labour and material costs shall be carried by the contractor. This shall also apply, if the disbursements increase, because delivery items were brought to a different place than the place of delivery, corresponding to their use according to regulations. For the duration of the remedy the course of the limitation period shall be stopped. The same shall apply for the time in which the delivery item can not be used due to a defect. The stop of the deadline shall commence with the day, the defect was reported to the contractor and shall end with the day the newly delivered or remedied delivery item is handed over. If the faulty delivery item is not remedied, as the case may be replaced within the period given by the ordering party, the ordering party shall be entitled to carry out the remedy at its own choice at the expense of the contractor by itself or by a third party or to enforce the legal rights, respectively the claims to withdraw, for reduction, as the case may be for damages, inclusive of the rights for replacement of defects or consequential harm caused by defect, if the defect was caused by the contractor. If the delivery item is fixed to other objects, especially if installed into single entities, the contractor shall also be liable for the damages caused to the single entity by the delivery item.

5.4 Irrespective of the above mentioned rights the contractor shall exempt the ordering party from claims made by third parties within the legal scope of or from withdrawal, reduction or compensation in connection with the defects of the delivered goods. This shall not apply, if the defect did not already exist at the time of the transfer of risk; the burden of proof shall be carried by the contractor. The claim for exemption shall not exist for claims arising from an assurance made by the ordering party to its buyers, if the assurance does not correspond to any assurance given by the contractor.

¹ Translator's note: BGB = bürgerliches Gesetzbuch = German Civil Code

² Translator's note: HGB = Handelsgesetzbuch = German Commercial Code

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5.5 In case a defect on the delivery item can be established, the contractor shall pay the costs for the inspection which became necessary, with a lump sum common for the ordering party in the amount of 5% of the purchase price, but however a minimum of € 75,00, as far as nothing else was agreed.

6. Assurances

The contractor shall assure, that the delivered goods are based on the documents which form the basis of the order, such as drawings, descriptions, samples, specifications, acceptance terms etc., and correspond to the respective valid appropriate internal and external provisions, accident prevention regulations, the appropriate regulations and guidelines, the VDE standards and the state-of-the-art technology.

7. Contractual Right of Withdrawal

7.1 The ordering party shall be entitled to withdraw from given orders, if the orders it was given, which the delivery was intended for, will not be conducted. The contractor shall only be entitled to claim for damages, if the customer of the ordering party pays compensation.

7.2 Furthermore the ordering party shall be entitled to withdraw from an order completely or in part, if due to time lapse and technical or contractual changes the order is completely or in part invalid; the contractor shall be obliged to take back the delivery completely or part of it for the purchase price and to give the ordering party a credit.

8. Industrial Property Rights

8.1 The contractor shall guarantee, that the goods delivered by him do not violate any internal or external industrial property rights. The contractor agrees to indemnify the ordering party and/or its buyers, if these should be called upon amicably or judicially due to the violation of industrial property rights. In case of a legal dispute the contractor shall give the ordering party legal advice by its request. Furthermore the contractor shall be obliged to replace all damages which result for the ordering party and/or its buyers, because they trusted the free use of the delivery items. The damage of a buyer shall be only replaced by the contractor, if the buyer calls upon the ordering party. The contractor shall not be liable for the violation of industrial property rights, if he exclusively manufactured the items according to drawings and models of the ordering party and neither knew or had to know, that the manufacture of these items result in a breach of the above mentioned terms. By request of the ordering party the application for property rights made by the contractor shall be named. If the contractor notices a violation of industrial property rights or of applications for property rights, he shall immediately, unasked inform the ordering party about this.

8.2 If the goods are ordered or purchased abroad, it shall be in the scope of responsibility of the contractor to see to the necessary permissions for export and import and he shall also carry the costs for this.

9. Supply of the Ordering Party; Provision of Spare Parts

9.1 In case the ordering party provides any tools, such as depression, teachings, matrices, models, samples, implements, drawings and suchlike, these shall remain its property. The contractor shall store these separately and accessible for the ordering party at all times; mark them as the property of the ordering party and handle them carefully. By request of the ordering party these shall be immediately handed over and copies thereof destroyed. On demand of the ordering party the contractor shall submit a written confirmation about this. The return shall take place in an orderly condition. At his own expense the contractor shall insure the provision against fire, theft and any other type of damage. All copyrights and industrial property rights shall remain with the ordering party.

9.2 Tools, which are produced or provided by the contractor, shall be kept for service after completion of the last run production for the replacement demand of the ordering party for a period of 10 years. The contractor shall be obliged to deliver the ordering party within this period by request with items produced by using the above mentioned tools.

9.3 The tools given to the contractor or manufactured according to specifications given by the ordering party shall not be allowed to be sold, assigned by way of collateral, pledged or copied or in other ways made available to third parties without the explicit written consent of the ordering party. The same shall apply to the items manufactured with the help of the before mentioned tools.

9.4 Only the ordering party shall be entitled to the right to use the arising developments and the thereof resulting further developments within patent or other industrial property rights.

10. Prices

The prices mentioned in the order shall be binding for the whole duration of the order. The contractor shall guarantee that the agreed prices are not inferior than those granted other ordering parties. In the contrary case the provisions allowed the other ordering party shall be deemed as agreed for this order, if there are no realistic reasons for a betterment of the other ordering party. Overpayments shall be refunded to the ordering party with the interest rate customary in banking.

11. Invoice and Payment

11.1 Invoices shall be submitted in duplicate immediately after delivery. The invoices shall include the order number indicated by the ordering party and the marks asked for in the order.

11.2 The day the invoice is received, as the case may be the handing over of an irrevocable confirmation of transfer to a forwarding agency shall be relevant for the start of the payment period. If nothing else was agreed, the payment shall take place within 14 days with a 3% cash discount or within 30 days net.

12. Lien, Offset, Assignment

12.1 In case of existence of a warranted defect, the ordering party shall be obliged to retain the payment in the amount considered for the item with the defect, until the orderly remedy of the defect.

12.2 The ordering party shall have the right offset claims, which a company, of which he owns at least 50% ,is entitled to against the contractor.

12.3 The transfer to third parties, as well as the assignment of the claims/rights arising from the order shall require the prior written consent of the ordering party.

13. Reservation of Title

The agreement concerning the reservation of title shall require the prior written consent of the ordering party and can not be agreed one-sided. A consent of the ordering party shall as a principal only cover simple reservation of property rights. Additional reservations of titles shall be excluded.

14. Nondisclosure

14.1 The contractor shall keep secret all internal information, he becomes acquainted with during the business relationship with the ordering party as business secrets.

14.2 Only the data necessary for the order processing shall be also used by the ordering party as well as by the contractor, considering the provisions of the of the Federal Data Protection Act.

15. Final Clause

If the contractor is a general merchant, jurisdiction for all disputes arising in connection with the delivery transactions with internal as well as with external contractors, shall be the domicile of the ordering party. German law shall be applicable. The ordering party shall have the right at its own choice, to sue the contractor at a different for him appropriate jurisdiction. The UN Convention on Contracts for the International Sale of Goods shall not apply. Should single provisions of the order be or become completely or in part invalid, the validity of the rest shall remain unaffected. In this case the ordering party and the contractor shall be obliged to replace the invalid provision by a valid agreement, which comes close to the economic purpose of the invalid provision.

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