



### 3 SL PacTec GmbH & Co. KG General Terms and Conditions of Sale

#### § 1 General, area of application

(1) These General Terms and Conditions of Sale (*GTCS*) shall apply to all of our business relationships with our customers ("**Buyer**"). The GTCS shall apply only if the Buyer is (i) an entrepreneur (§ 14 of the *Bürgerliches Gesetzbuch*, (the Civil Code, the "**BGB**"), a legal person under public law, or an investment fund (*Sondervermögen*) under public law.

(2) The GTCS shall apply in particular, but not solely, to contracts governing the sale and/or delivery of movable items ("**Goods**"), including additional services such as recommendations, planning aids, consultation, etc., regardless of whether we manufacture said Goods ourselves or purchase them from suppliers (§§ 433, 651 BGB). Unless otherwise stipulated, the version of the GTCS in effect at the time of the order of the Buyer or the version last given to the Buyer in the text-form (*Textform*) shall also apply to future contracts of the same nature; we shall not have to point this out again in each individual case.

(3) Our GTCS shall apply exclusively. Any deviating, conflicting, or supplemental general terms and conditions of the Buyer shall become an integral part of the contract only if we have expressly agreed upon their validity. This consent requirement shall always apply, even if we deliver the Goods to the Buyer unconditionally in cognizance of the General Terms and Conditions of the Buyer.

(4) Any individual agreement with the Buyer in an individual case (including ancillary agreements, restatements, and amendments), shall always take precedence over these GTCS. A written agreement or our written consent shall, subject to evidence to the contrary, be dispositive for the content of any agreements of this nature.

(5) Any declarations and notifications of legal significance which are to be given to us by the Buyer after entering into the contract (e.g., the setting of deadlines, notices of defects, any withdrawal declaration, or price reduction), shall require, in order to be effective, the written-form (*Schriftform*).

(6) Any reference to the effectiveness of legal provisions shall have significance solely for clarification purposes. Even without such a clarification, therefore, the provisions of law shall apply, insofar as in these GTCS they are not directly modified or expressly excluded.

#### § 2 Contract formation

(1) Our offers shall be without obligation and non-binding. They shall constitute a solicitation to the person or party placing the order to give us a binding offer to enter into the contract. Such shall also apply if we have provided the Buyer with any catalogs, technical documentation (e.g., drawings, plans, calculations, estimates, references to DIN standards), other product descriptions or documents – even in electronic form – in which we reserve our ownership rights and our copyrights.

(2) The ordering of the Goods by the Buyer shall be deemed a binding offer to enter into a contract. Insofar as nothing

else results from the order, we shall have the right to accept this offer to enter into a contract within three (3) weeks of receipt with us.

(3) We can declare our acceptance in writing (e.g., by means of an order confirmation) or by delivering the Goods to the Buyer.

#### § 3 Delivery period and default

(1) The delivery period shall be individually stipulated or shall be specified by us upon acceptance of the order.

(2) Insofar as, for reasons for which we are not responsible, we cannot comply with binding delivery periods (unavailability of performance), we shall inform the Buyer thereof without undue delay and shall simultaneously provide notice of the new, prospective delivery period. If the service is not available even within the new delivery period, then we shall have the right to wholly or partially withdraw from the contract; we shall reimburse without undue delay any consideration of the Buyer already rendered. Circumstances deemed as 'unavailability of performance' within the meaning herein shall include, but not be limited to, any untimely self-delivery by our suppliers (i) if we have entered into a congruent hedging transaction, (ii) if neither we nor our suppliers are at fault, or (iii) if we are not obligated to procure the items in the individual case.

(3) The onset of our delivery default shall be governed by provisions of law. In every case, however, a reminder by the Buyer shall be required. If we enter into delivery default, then the Buyer shall be able to demand lump-sum compensation for damages caused by default. The lump-sum compensation shall be 0.5% of the net price (delivery value) for each full calendar week of default, but no more than 5% of the total net price of the Goods delivered late. We reserve the right to substantiate that there has occurred no damage at all, or damage significantly less than the lump-sum compensation amount.

(4) Such shall be without prejudice to the rights of the Buyer pursuant to § 8 of these GTCS and to our statutory rights, especially in the event of preclusion of our obligation to perform (e.g. due to the inability or unreasonableness of the performance and/or subsequent performance).

#### § 4 Delivery, transfer of risk, acceptance, default in acceptance

(1) Delivery shall be ex works, which shall also be the place of performance for the delivery and any subsequent performance. Upon request of and at the expense of the Buyer, the Goods shall be delivered to another destination (sale by dispatch). Insofar as not stipulated otherwise, we ourselves shall have the right to determine the type of delivery (including, but not limited to, the shipping company, shipping route, and packaging).

(2) The shipment shall be insured by the seller only upon the express wish of the client and at the client's expense against (i) damages from theft, breakage, fire, water, and during transportation, or (ii) other insurable risks.



(3) The risk of accidental destruction or accidental deterioration of the Goods shall pass to the Buyer by no later than upon delivery of the Goods. In case of a sale by dispatch, however, the risk of accidental destruction and accidental deterioration of the Goods as well as the risk of delay transferred with the delivery of the Goods shall pass to the shipper, the carrier, or other person or entity retained for shipping. Insofar as acceptance has been stipulated, such shall be dispositive concerning the passage of risk. Otherwise, the provisions of law governing contracts for work and services shall apply *mutatis mutandis* to any stipulated acceptance. If the Buyer is in default acceptance, however, then the transfer or acceptance shall be deemed to have occurred.

(4) If the Buyer (i) enters into acceptance default, (ii) fails to cooperate, or (iii) delays our delivery for other reasons for which the buyer is culpable, then we shall have the right to demand compensation of the damages arising therefrom, including additional expenses (e.g., storage costs).

#### **§ 5 Prices and terms and conditions of payment**

(1) Insofar as nothing is otherwise stipulated in the individual case, our price current as of the date of entering into the contract shall apply, specifically, ex stock, plus any statutory value-added tax (*Umsatzsteuer*) and expenses for packaging.

(2) In the event of a sale by dispatch (§ 4 para. 1), the Buyer shall bear (i) the transportation expenses ex works and (ii) the expenses for any transportation insurance desired by the Buyer. The Buyer shall have to bear all and any customs duties, fees, taxes, and other public charges.

(3) The purchase price shall be mature for payment within thirty (30) calendar days of invoicing and delivery or of acceptance of the Goods. However, we shall also have the right, within the scope of an ongoing business relationship, to carry out full or partial delivery at any time only against advance payment. We shall declare a commensurate reservation by no later than upon order confirmation.

(4) The Buyer shall enter into default upon the expiration of the payment deadline above. During the default, the purchase price shall accrue interest at the respectively applicable statutory default interest rate. We reserve the right to assert claims for additional damages due to default. Such shall be without prejudice to our claim for commercial maturity interest *vis-à-vis* merchants (*Kaufleuten*) (§ 353 of the *Handelsgesetzbuch* (the Commercial Code, the "HGB").

(5) The Buyer shall be entitled to rights of setoff or retention only if its claim has been judicially determined or is undisputed. In the event of delivery deficiencies, the reciprocal rights (*Gegenrechte*) of the Buyer, including, but not limited to, those pursuant to § 7 Sect. 6 Line 2 of these GTCS, shall not be affected.

(6) If, after entering into the contract, it becomes apparent that our claim to the purchase price is jeopardized due to the Buyer's lack of ability to perform, (e.g., due to an application to initiate bankruptcy proceedings), then in accordance with provisions of law governing performance refusal and – after setting a deadline, as applicable – we shall have the right to withdraw from the contract (§ 321 BGB). For contracts governing the manufacture of untenable

items (single-item production), we shall be able to declare the withdrawal immediately; such shall be without prejudice to the provisions of law governing the dispensability of setting a deadline.

(7) If any changes occur to the price basis prior to delivery, then we shall reserve the right to commensurately adjust our prices. However, such shall apply only to delivery periods of more than twelve (12) months and to price adjustments of up to 10%. In the event of higher rates, a further price adjustment shall be necessary. For orders for which no prices have been stipulated, our prices for that day shall apply.

(8) Any subsequent reduction of the order amount shall cause an increase in the unit price and the stipulated share of tool cost shares, taking into particular consideration any additional equipment costs and launching costs. If a material change occurs in certain cost factors (wages, initial materials, energy, etc.), then it shall be possible to reasonably adjust the stipulated price commensurately to the influence of these factors.

(9) The prices of earlier orders or ongoing orders shall not be binding for follow-up orders.

(10) If a material change in wage, material, or energy costs occurs in long-term contracts (contracts having a term of more than twenty-four (24) months and unlimited contracts), then each contracting partner shall have the right to demand a reasonable adjustment of the price, taking these factors into consideration.

#### **§ 6 Ownership proviso**

(1) We shall retain title in the goods sold until complete payment of all of our present and future receivables arising (i) from the purchase contract (secured receivables) and (ii) from an ongoing business relationship.

(2) Prior to complete payment of the secured claims, the Goods subject to the ownership proviso shall not be allowed to be pledged to third parties or to be conveyed as security. The Buyer shall have to inform us in writing without undue delay if (i) an application to initiate bankruptcy has been made or (ii) third parties obtain access to our goods (e.g., via attachment).

(3) In the event of conduct of the Buyer in contravention of the contract, including, but not limited to, non-payment of the mature purchase price, we shall have the right (i) to withdraw from the contract in accordance with provisions of law and (ii) to demand the surrender of the Goods based upon the ownership proviso and the withdrawal. If the Buyer does not pay the matured purchase price, then we may assert these rights only if we have previously set the Buyer a reasonable grace period without success or if a grace period of this nature is dispensable under provisions of law.

(4) Until revocation as contemplated under (c) below, the Buyer shall have to be authorized to resell and/or to process the proviso goods in the ordinary course of business. In this case, the following provisions shall additionally apply.

(a) The ownership proviso shall extend to products coming into existence at their full value via processing, mixing, or combining our Goods in their entirety, whereby we shall be



deemed the manufacturer. If the ownership right of third parties continues to exist in the event of processing, mixing, or combining with third-party Goods, then we shall acquire joint title in proportion to the invoiced values of the processed, mixed, or combined Goods. Apart therefrom, the same provisions shall apply to the product created as to the Goods delivered under the ownership proviso.

(b) In accordance with the paragraph above, the Buyer shall hereby assign to us as security the entirety of any receivables arising against third parties from resale of the goods or in the amount of any joint ownership share of ours. We shall accept the assignment. The duties of the Buyer set forth para. 2 shall also apply in view of the assigned receivables.

(c) The Buyer, along with us, shall remain empowered to collect the receivable. We shall be obligated not to collect the claims as long as (i) the Buyer complies with its payment obligations towards us, (ii) there is no deficiency in its ability to perform, and (iii) we do not assert the ownership proviso by exercising a right pursuant to para. 3. If such, however, is the case, then we shall be able to demand that the Buyer (a) disclose the assigned receivables and their debtors, (b) furnish all information requisite for collection, (c) hand over all pertinent documents, and (d) inform the debtors (third parties) of the assignment. In addition, in this case we shall have the right to revoke the authorization of the Buyer to engage any further sale and processing of the Goods under the ownership proviso.

(d) If the realizable value of the securities exceeds our receivables by more than 20%, then upon the Buyer's demand we shall release the securities to the Buyer at our discretion.

### **§ 7 Defect claims of the Buyer**

(1) Insofar as nothing else is provided below, the provisions of law shall apply to the rights of the Buyer in the event of any case of material and title defects (including incorrect and insufficient delivery as well as improper installation or faulty installation instructions). In every case, the special provisions of law governing the final delivery of Goods to a consumer (supplier recourse pursuant to §§ 478, 479 BGB) shall not be affected.

(2) Above all, the basis of our liability for defects shall be the agreement made governing the material quality (*Beschaffenheit*) of the Goods. As 'agreement' governing the material quality (*Beschaffenheit*) of the Goods shall be deemed all product descriptions that are the purpose of the individual contract; for this purpose, it shall not make any difference whether the product description originates with the Buyer, with the manufacturer, or with us.

(3) The information regarding characteristics contained in our public statements such as catalogs, brochures, circulars, advertisements, illustrations, commercials, and price lists shall belong to the material quality (*Beschaffenheit*) only insofar as they have become part of the contract. Any public statements of a third-party manufacturer or its agent shall be part of the material quality (*Beschaffenheit*) of the Goods only (i) if said statements are stipulated in the contract or (ii) if we have appropriated them expressly and in writing in public statements.

(4) The information and illustrations contained in brochures and catalogs shall be solely approximate values customary in the industry, unless we have expressly designated them as binding.

(5) If no material quality (*Beschaffenheit*) was stipulated, then in accordance with provisions of law (§ 434 para. 1 sent. 2 and 3 BGB) it shall have to be assessed whether or not a defect is present. However, we shall not accept any liability for public statements of the manufacturer or of other third parties (e.g., advertising statements).

(6) It shall be prerequisite to any defect claims of the Buyer that the Buyer has complied with its statutory obligation to inspect and to furnish notice of defects (§§ 377, 381 HGB). If a defect is evidenced during inspection or later, then written notice thereof is to be made to us without undue delay. Notice shall be deemed 'without undue delay' if it is effected within two (2) weeks, whereby the timely dispatch (*Absendung*) of the notification shall suffice to preserve the deadline. Regardless of these statutory obligations to inspect and to furnish notice of defects, the Buyer shall have to report obvious defects (including incorrect and insufficient delivery) in writing within two (2) weeks of the delivery date. Here, too, the timely mailing of the notification shall suffice to preserve the deadline. If the Buyer fails to properly inspect the Goods and/or notify us of the defect, then any liability of ours for the undisclosed defect shall be precluded.

(7) If the delivered item is defective, then we shall be able to decide whether we will provide subsequent performance by (i) eliminating the defect (repair) or (ii) by delivering a defect-free product (replacement delivery). Such shall be without prejudice to our right, as provided by law, to refuse subsequent performance.

(8) We shall have the right to make the obligatory supplementary performance contingent upon the payment by the Buyer of the mature purchase price. However, the Buyer shall have the right to retain a reasonable part of the purchase price, in proportion to the defect.

(9) The Buyer shall have to give us the requisite time and opportunity for the subsequent performance owed, and in particular shall have to provide us with the complained-of Goods for testing purposes. In the event of replacement delivery, Buyer shall have to return the defective item to us as provided by law. If we were not originally obligated to perform installation, then any subsequent performance shall not include any dismantling of the defective item or its reinstallation.

(10) We shall bear any expenses requisite for testing and for subsequent performance, including, but not limited to, transportation, delivery, work, and materials costs (not installation and dismantling costs) if a defect actually exists. Otherwise, we shall be able to demand that the Buyer reimburse us for any expenses arising from the unjustified defect elimination request (especially testing and transportation expenses), unless the lack of defectiveness was not discernible to the Buyer.

(11) If the supplementary performance fails or an appropriate additional period set by Buyer for the supplementary performance expires without success or is unnecessary pursuant to legal provisions, then the Buyer



shall be able to withdraw from the purchase agreement or to reduce the purchase price. However, no right to withdraw shall exist in the event of a slight defect.

(12) Any claims of the Buyer for compensatory damages or for the reimbursement of fruitless expenditures shall exist, even in the event of defects, only in accordance with § 8 and shall otherwise be precluded.

### § 8 Other liability

(1) Insofar as nothing else follows from these GTCS, including the provisions below, we shall be liable in the event of a breach of contractual and extra-contractual duties as provided by law.

(2) We shall be liable for compensatory damages – regardless of legal grounds – within the framework of culpable liability in the event of willful intent (*Vorsatz*) and gross negligence (*grobe Fahrlässigkeit*). In the event of simple negligence (*einfache Fahrlässigkeit*), we shall be subject to a lower threshold standard of liability in accordance with provisions of law (e.g., for due care in our own affairs) only

a) for damages arising from injury to life, limb, or health;

b) for damages arising from a significant breach of a material contractual duty (a duty whose fulfillment is a prerequisite for enabling proper fulfillment of the contract and upon the compliance with which the contracting partner regularly relies and may rely) In this event, however, our liability shall be limited to compensation for any foreseeable, typically occurring damage.

(3) The liability limitations arising from Sect. 2 shall also apply in the event of any violation of obligations by or to the benefit of persons for whom we are responsible pursuant to provisions of law. Said limitations shall not apply insofar as we have (i) maliciously concealed a defect or (ii) assumed a guarantee for the material quality (*Beschaffenheit*) of the Goods and for any of the Buyer's claims pursuant to the *Produkthaftungsgesetz* (the Product Liability Act, the "**ProdHaftG**").

(4) The Buyer shall be able to withdraw from or terminate the contract due to a breach of duty not consisting of a defect only if we are responsible for the breach of duty. Any right of the Buyer to freely terminate shall be precluded (especially pursuant to §§ 651, 649 BGB). Apart therefrom, the prerequisites and legal consequences as provided by law shall apply.

### § 9 Period of limitation

(1) In derogation of § 438 para. 1 sent. 3 BGB, the general limitations period for claims arising from material and title defects shall be one (1) year from delivery. If acceptance has been stipulated, then the period of limitation shall commence upon acceptance.

(2) If the Goods are a structure or an item that has been used in keeping with its customary manner for a structure and has caused the defectiveness of the structure (construction material), then the limitations period shall be five (5) years from delivery in accordance with the provisions

of law (§ 438 para. 1 sent. 2 BGB). Such shall be without prejudice to any additional provisions of law regarding the limitations period (including, but not limited to, § 438 para. 1 sent. 1, para. 3, §§ 444, 479 BGB).

(3) The aforementioned limitations period of the law governing sales of goods law shall also apply to any contractual and extra-compensatory damages claims by the Buyer, which claims are based upon a defect of the Goods, unless the application of the regular statutory limitations period (§§ 195, 199 BGB) would lead to a shorter period of limitation in the individual case. Any claims of the Buyer for damages pursuant to § 8 para. 2 sent. 1 and sent. 2(a) as well as those pursuant to the *ProdHaftG* shall, however, lapse exclusively in accordance with statutory limitation periods.

### § 10 Choice of law and venue

(1) The law of the Federal Republic of Germany exclusively shall apply to these GTCS and to the contractual relationship between us and the Buyer, to the exclusion of international uniform law, including, but not limited to, the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG).

(2) If the Buyer is a merchant (*Kaufmann*) within the meaning of the HGB, a legal person under public law, or an investment fund (*Sondervermögen*) under public law, then the exclusive – and international – venue for any and all disputes arising directly or indirectly from the contractual relationship shall be our business seat in Memmingen, Germany. The same shall apply *mutatis mutandis* if the Buyer is an entrepreneur (*Unternehmer*) within the meaning of § 14 BGB. In any event, however, we shall also have the right to file suit at the place of performance of the delivery obligation pursuant to these GTCS or an individual ancillary agreement taking precedence or at the general venue of the Buyer. Such shall be without prejudice to any provisions of law taking precedence, including, but not limited to, those governing exclusive jurisdiction.