

**General Terms and Conditions of Sale and Delivery  
of Pfinder KG**

Status: June 2010

**III. Prices**

**I. General**

1. Deliveries from Pfinder KG (hereinafter "Pfinder") are subject only to the following General Terms and Conditions of Sale and Delivery (hereinafter "General Terms and Conditions"). Any conditions used by the buyer shall not apply. They shall not even become a component of the agreement if Pfinder makes delivery to the buyer in the knowledge that there are conditions of the buyer which contradict or depart from these General Terms and Conditions.
2. Departures from and additions to these General Terms and Conditions are only valid with express written confirmation from Pfinder and shall apply only to the respective transaction for which they were made.

**II. Offer, Conclusion of Contract  
Reservation of the Right to Make Changes**

1. Pfinder's offers are non binding.
2. A contract only comes into force if Pfinder sends written confirmation within 14 days after receipt of the order or call-off request or makes the delivery within this period.
3. Pfinder shall retain all title and copyright in illustrations, drawings, calculations and other offer documents. Before passing such information on to third parties the buyer shall obtain express written consent from Pfinder.
4. If Pfinder advises the buyer in connection with the conclusion of the purchase agreement this shall be subject to best knowledge of Pfinder. This shall not give rise to a consultancy agreement. Data and information with respect to the suitability and application of the merchandise are non-binding and do not release the buyer from its own obligation to inspect and carry out tests with regard to the suitability of the merchandise delivered for the procedures and purposes intended by it.
5. Pfinder reserves the right to make slight changes to the subjects of the agreement and changes which are common practice. Pfinder is also entitled to change the subject of the agreement if this is necessary for technical reasons and the buyer can be reasonably expected to accept such change.

1. All prices shall apply "ex works" plus prevailing statutory Value Added Tax, mineral oil tax and other taxes, customs duties, charges and encumbrances, unless set out otherwise in writing.
2. Unless expressly set out otherwise in writing for an individual case, items ordered may not have a value of less than EUR 200.00 per order position. In the case of orders with a lower order value we shall make an additional charge of EUR 130.00 for small quantities.
3. Pfinder reserves the right to amend the prices accordingly if, once the contract has been concluded, costs increase or decrease, in particular owing to the conclusion of tariff agreements, changes in the price of the materials and energy consumed or changes to transport costs, provided delivery is not to be made within two months of conclusion of the contract. Pfinder shall give due notice of corresponding price changes.

**IV. Terms of Payment**

1. Unless otherwise agreed in writing, payment of invoices is due immediately upon receipt and performance without any deductions.
2. Any discounts or rebates granted apply to the respective order for which they were agreed in writing only, unless otherwise agreed in writing.
3. As a rule payments shall be made by bank transfer. Any transfer costs shall be borne by the buyer. Payment by bills of exchange may only be made after obtaining prior written consent from Pfinder; in any event acceptance of the bill of exchange is only on account of performance.
4. The buyer is automatically in default of payment 14 days after the due date and receipt of the invoice, unless it is not responsible for non-payment. In the event of default of payment Pfinder is entitled to demand interest at a rate of 8 % points above the respective base interest rate. We reserve the right to make further claims over and above this. If payment by instalments has been agreed and if the buyer defaults on payment of an instalment the residual debt from the contractual relationship shall be due for payment immediately.

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5. Even if there are complaints on the grounds of defects the buyer is only entitled to set-off and retention if the counter-claims are undisputed or declared final and absolute by a competent court.
6. If the financial situation of the buyer deteriorates after conclusion of the contract or if a deterioration in assets only becomes noticeable to Pfinder once the contract has been concluded so that the payment claim of Pfinder is in jeopardy Pfinder may, subject to any further claims, revoke payment targets granted and make further deliveries dependent on advance payment or the grant of other securities. The same shall apply in the event of default in payment.
2. Under statutory provisions Pfinder is also liable if the buyer is entitled, as a result of a delay in delivery for which Pfinder is responsible, to assert that it has no further interest in further fulfilment of the contract. However, in this event if Pfinder has not acted with intent, liability is restricted to foreseeable damage typical of this type of contract.
3. In the event of a delay in delivery the buyer can demand not only delivery but also reimbursement of any loss incurred by the delay. However, provided Pfinder has not acted with intent or gross negligence, this claim is restricted to 0.5% of the delivery value of the delivery concerned per week of delay and to a maximum of 5% of the value of the merchandise to be delivered. The right of the buyer, to rescind the agreement and/or to compensation once a reasonable subsequent deadline has expired owing to the non-fulfilment in accordance with XII. shall remain unaffected.

### **V. Delivery Dates and Deadlines**

1. Delivery dates and deadlines are only binding if Pfinder has confirmed them expressly in writing.
2. Observance of the delivery dates and deadlines stated is contingent on proper and punctual fulfilment of all obligations incumbent upon the buyer.
3. Observance of the confirmed delivery periods and dates is subject to Pfinder having been supplied in a correct and timely manner. Should it become apparent that delays are likely Pfinder will notify the buyer as soon as possible.
4. The delivery time shall be deemed to have been met if, by expiry of this date, the merchandise has left Pfinder's premises or if Pfinder has notified the buyer that the merchandise is ready for dispatch.
5. If the buyer is in default of acceptance Pfinder is entitled to store the merchandise at the expense and risk of the customer. A fixed rate of EUR 15.00 per container and month commenced shall be levied. However the buyer may reserve the right to provide documentation that the actual costs are less. This shall have no effect on any further claims which Pfinder may have.

### **VI. Delay in Delivery**

1. Pfinder is liable in accordance with the statutory provisions in as far as the underlying purchase agreement is based on a transaction where delivery is by a fixed date. In this connection if Pfinder has not acted with intent, liability is restricted to foreseeable damage typical of this type of contract.

### **VII. Force Majeure**

Force majeure, industrial action, unrest, official measures and other external events which have no operational link, are unforeseeable, unavoidable despite the extremely sensible application of due care to be expected shall release the contractual partners from their performance obligations for the period of the disturbance and the scope of their implications. As far as can be reasonably expected, the contractual partners shall provide whatever information is necessary without undue delay and adjust their obligations to the changed circumstances in good faith. If an event of force majeure lasts for more than eight weeks each contractual partner to the contract is entitled to rescind the agreement.

### **VIII. Passage of Risk, Part Delivery, Packaging, Lending Containers**

1. Unless agreed otherwise in writing, the risk shall be transferred on handover of the merchandise at the works of Pfinder or when delay in acceptance occurs. If part deliveries are made this shall also apply to the respective part delivery. If, in individual cases, diverging trade clauses are agreed these shall be interpreted in accordance with INCOTERMS in the version which prevails on conclusion of the contract.
2. Part deliveries are permissible to the extent that they can be reasonably expected of the buyer.

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3. Packaging can be returned at the works of Pfinder or, if Pfinder so chooses, to the place given on the delivery note during usual operating hours. Packaging shall be returned clean, free of foreign matter and contamination from other products and separated according to type of packaging. If the aforementioned duties are not fulfilled Pfinder is entitled to invoice the buyer for any extra costs for cleaning and sorting which may arise. Contaminated packaging shall not be accepted unless the product is responsible for the contamination.
4. If Pfinder delivers the merchandise in its own containers the latter shall remain the property of Pfinder. The buyer shall hold these in safe-keeping free of charge for Pfinder and shall return them to Pfinder emptied and clean to Pfinder's registered office using the original marks and numbers or, if Pfinder so chooses, shall make them available for a third party instructed by Pfinder to collect them at the registered office of the buyer
5. If the containers on loan are damaged the buyer shall pay Pfinder a fixed fee of EUR 500.00 in the case of loss or in the case of irreparable damage of EUR 2,500.00 per container. However the buyer retains the right to prove that the actual costs incurred for the repair or replacement value are lower. This shall have no effect on any further claims which Pfinder may have.
6. If the buyer is in default with the return of a container it shall pay Pfinder a fixed charge for use of EUR 20.00 per container and day. However the buyer retains the right to prove that the actual costs incurred for the repair or replacement value are lower. This shall have no effect on any further claims which Pfinder may have.

**IX. Transport**

1. If Pfinder takes over dispatch in an individual case and nothing is agreed in writing otherwise, dispatch shall be at the risk of the buyer. Pfinder shall choose the transport company as it sees fit.
2. If delivery is incomplete or if there is obvious external transport damage the buyer shall notify the transport company of this on receipt of the merchandise. Obvious external transport damage shall be notified to the transport company in written form (e.g. via fax, letter or e-mail) within seven days after delivery. Pfinder shall definitely be informed of this notification.

**X. Reservation of Title**

1. Pfinder reserves title in all merchandise which it has supplied until full payment has been received. In the event of a current account, retention of title shall serve as security for the balance due to Pfinder.
2. The buyer shall treat the merchandise with care; in particular it shall insure it sufficiently against fire, water and theft at reinstatement value at its own cost.
3. In the event of seizure or any other measure taken by third parties, the buyer shall notify Pfinder in writing without undue delay so that Pfinder can initiate legal proceedings pursuant to § 771 German Code of Civil Procedure in order to prevent execution of any court order. If the third party is unable to reimburse the costs incurred by Pfinder in court and out of court of a claim pursuant to § 771 German Code of Civil Procedure, the buyer is liable for the damages incurred hereby.
4. The processing of or alteration to reserved goods shall always be carried out for Pfinder by the buyer. If the merchandise is processed using other items which do not belong to Pfinder, Pfinder shall acquire co-ownership of the new item in the ratio of the value of the merchandise delivered to the other processed items at the time of processing.
5. If the merchandise is irreversibly mixed using other items which do not belong to Pfinder, Pfinder shall acquire co-ownership of the new item in the ratio of the value of the merchandise delivered to the other mixed items at the time of mixing. If the mixing process takes place in such a way that the buyer's item must be regarded as the principal item the parties shall be deemed to have agreed that the buyer shall transfer co-title to Pfinder pro rata.
6. Should the buyer sell the merchandise delivered – whether processed, mixed or not – in the due course of business, it hereby assigns any claims arising from selling the merchandise with all ancillary rights vis-à-vis its customer to Pfinder. The buyer shall retain title in the merchandise until its customers have fully paid the purchase price.
7. For legitimate reason and at Pfinder's request the buyer shall notify third-party purchasers of the assignment and provide Pfinder with any information and documents which it needs to assert its rights.

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8. Should the realisable value of the security of Pfinder exceed the debt claim to be secured by more than 10 % Pfinder shall release securities – at the choice of Pfinder – at the request of the buyer.
5. The buyer may only claim for damages in accordance with mandatory statutory provisions and the following provision in XIII.
6. All claims for defects with the exception of any claims in accordance with XIII. shall become statute-barred after expiry of 12 months after the delivery.

**XI. Material Defects**

1. The buyer shall inspect the merchandise immediately after receipt provided this is possible in the usual course of business and shall inform Pfinder in writing of any obvious defects without undue delay at the latest however within seven days after delivery. The buyer shall notify Pfinder in writing of any defects, which cannot be recognised in the context of its due course of business, without undue delay after discovery however at the latest within seven days after discovery of the defect. Otherwise the delivery shall be deemed to have been accepted unless defects were fraudulently concealed by Pfinder.
2. Unless otherwise agreed, the contractually owed quality of the merchandise shall be set out exclusively in the product specifications of Pfinder prevailing on delivery. Properties of samples are only binding in as far as they have specifically been agreed as a quality of the merchandise. Such agreement shall be in written form. Information as to quality and product life and other information shall only considered to be guarantees if they have been agreed and specified as such. Such guarantee must be confirmed in writing by the management.
3. If faulty merchandise is delivered and due and proper complaint is made in accordance with X.1. The buyer must first give Pfinder the opportunity to make subsequent delivery. The buyer is entitled to rescind the contract or to reduce the purchase price if the subsequent delivery is unsuccessful, the buyer cannot be expected to accept it, is refused by Pfinder or is not executed within a reasonable deadline set by the buyer. In the event of minor defects the contract may not be rescinded.
4. Claims as to defects shall not exist if the defect results from inappropriate or unsuitable use or storage, inappropriate or unsuitable transport, faulty or negligent handling or a change based on environmental conditions difficult for the particular nature of the merchandise.

**XII. Legal Defects**

1. In as far as rights of third parties prevent the contractual use of the merchandise the buyer shall inform Pfinder without undue delay of the assertion of such rights of third parties and shall give Pfinder all powers of attorney and grant all authorities required to defend the merchandise against the rights of third parties asserted at its own costs.
2. In as far as the rights of third parties prevent the contractual use of the merchandise Pfinder shall, at its discretion, introduce appropriate measures to eliminate the rights of third parties or the assertion thereof, procure the right of use from the third party at its cost or alter or replace the merchandise in such a manner that it no longer infringes the rights of third parties and in so far as the compliance of the merchandise with the contract is not impaired.
3. The buyer is entitled to rescind the contract or to reduce the purchase price if the subsequent fulfilment in accordance with XII.2 cannot be expected of the customer, is refused by Pfinder or is not executed by Pfinder within a reasonable deadline set by the customer. In the event of minor disruption to the contractual use of the merchandise the contract may not be rescinded.
4. A claim for compensation in accordance with statutory regulations and the regulations set out in XIII. can only be made if Pfinder knew or ought to have known the contradictory third party rights.
5. The buyer cannot make the aforementioned claims if infringement of the rights of third parties is based on the buyer's specifications and Pfinder had no knowledge of the contradictory rights of third parties or such lack of knowledge was not due to gross negligence.
6. All claims with the exception of any claims in accordance with XIII. shall become statute-barred after expiry of 12 months after the delivery.

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### **XIII. Liability**

1. Pfinder shall be liable for intent and gross negligence and intent and gross negligence on the part of its legal representatives and vicarious agents. If Pfinder, its legal representatives or vicarious agents has (have) not acted with intent, liability is restricted to foreseeable damage typical for this type of contract.
2. Pfinder shall also be liable in the event of negligent injury to life, limb or health caused by the Seller, its legal representative or vicarious agents and in the event of wilful failure to disclose a defect or assumption of a guarantee. In the latter case the extent of liability depends on the guarantee declaration.
3. Pfinder is also liable if it, its legal representatives or vicarious agents negligently breach(es) duties which are material for fulfilling the contract and on which the buyer relies and is entitled to rely on being fulfilled. If Pfinder, its legal representatives or vicarious agents has (have) not acted with intent, liability is restricted to foreseeable damage typical for this type of contract.
4. Pfinder is also liable in instances of mandatory statutory liability, for example pursuant to the Product Liability Act.
5. Otherwise liability is excluded irrespective of the legal grounds.
6. The buyer shall notify and consult Pfinder comprehensively and without undue delay if it intends to seek legal recourse in accordance with the afore-mentioned provisions. The buyer shall provide Pfinder with an opportunity to examine the loss occurrence.

### **XIV. Property Rights of Pfinder**

1. The buyer may not offer or supply replacement products instead of the products of Pfinder, making reference to this product, or make the connection with the word "replacement" or make a comparison with the specifications of replacement products in price lists and similar business documents and product specifications of Pfinder, irrespective of whether or not they are protected.

2. On conclusion of the contract the buyer shall not be granted a utilisation right in the product name, in particular in the trade marks of Pfinder. When using products of Pfinder for production purposes or further processing, the buyer is not entitled to use product names of Pfinder, in particular its trade marks, on such merchandise or on their packaging or in the associated printed matter and advertising material without prior written consent of Pfinder in particular as a list of components.

### **XV. Final Provisions**

1. Amendments and additions to this agreement shall be in writing signed by both contractual partners to be valid. This shall also apply to any amendment to the written form requirement.
2. This agreement shall be subject to the laws of the Federal Republic of Germany excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).
3. Unless otherwise expressly agreed, the place of performance shall be Pfinder's registered place of business.
4. The registered office of Pfinder shall be the exclusive place of jurisdiction for all disputes arising from or in connection with this agreement and its validity. However, Pfinder is also entitled to file action at the main registered office of the buyer.
5. If a contractual partner ceases to make payments or if insolvency proceedings are commenced on its assets the other contractual partner is entitled to rescind the part of the agreement which has not been fulfilled.
6. If a provision in these terms and conditions and any further agreements concluded should be or become invalid, this shall not affect the validity of the remaining provisions in the agreement. The contractual partners are obliged to replace the invalid provision with a provision which reflects as closely as possible the economic purpose of the appropriate provision. The above shall apply in case of a lacuna.
7. In order to execute the agreement Pfinder shall collect personal data and save them for processing exclusively for the execution of this agreement.