

Conditions of Delivery

(Edition April 1999)

1. When Binding

The conditions of delivery are binding when recognised by Pesa Waagen AG and the purchaser concerned by way of expression or inference. Any alterations and relating agreements only come into effect when confirmed in writing by us.

2. Perimeters, the Carrying out of and the Place of Delivery

The confirmation of an order shall determine the perimeters and the carrying out of the delivery. We shall deliver the product in a standard form software in a mechanically readable form, such being a valid version at the time delivery.

If we especially customise the product wholly or partly for the application of the customer, all work done will be judged according to specifications made by the customer under the conditions by which the transaction can be completed.

Alterations to the confirmation of order are permissible in as far as the product fulfils the same functions. We are not obliged to make alterations to products that have already been produced or delivered.

If no particular place for the carrying out of delivery is specified by the parties or is unclear in the course of business, our location of production shall be construed as the place of the carrying out of delivery.

3. Software and Know-how

The customer is permitted to use the transacted software, know-how, data-bank, and documentation for his own purposes, but not pass it on to a third person. We or our licensor reserve the rights to any use of the product by a third person, even when the customer makes alterations at a later stage to the software program or designated know-how.

Any alterations or passing on of the software by the customer shall only be permitted with written approval of us.

For security and archival purposes the customer is permitted to make a maximum of three copies of the software. Any copies in excess of this number shall require the express approval of our company.

The customer is required to make sure that all modifications and copies are covered by the same legal protection as the original.

4. Documentation

The customer is entitled to receive a customary instruction manual from our company. We shall provide, at an added cost, supplementary editions or documentation which are not available in a desired language. Changes in description and summaries of the documentation are permitted in as far as they meet the desired ends.

5. Discretion

Both parties shall not disclose business related information of each other to a third person, be it arising from the usual course of business or commonly known. Furthermore, both parties are obliged to hinder access by ancillary third persons to the information. Conversely, either of the parties shall be permitted to use knowledge arising from the course of business in future transactions.

Both parties are obliged to make the terms of discretion binding on their employees.

6. Information Obligations of the Customer

The customer is obliged to make the supplier aware of any particular technical preconditions in good time. These include legal, govern-mental, or other requirements that affect the carrying out of, and use of the product.

7. Delivery Dates

Only delivery dates set down in writing are binding in every case. Such delivery dates are prolonged,

- a) when instructions that the deliverer requires for the carrying out of delivery do not arrive on time, or when the customer alters them at a later stage.
- b) when the customer is behind schedule in carrying out his works due, or is delaying the fulfilment of his contractual obligations, particularly when he does not keep to the conditions of payment.
- c) when impediments occur that are not foreseeable by our company, like acts of God, mobilisation, war, political turmoil, extraordinary interruptions of business, work disputes, delayed or faulty deliveries, as well as govern-mental measures.

We are permitted to carry out of the delivery in parts.

In cases of delay the customer shall give us an estimated time limit to carry out work done at the later stage. If we fail to meet the dead line of the time limit, the customer shall have the right to reject the work done at the later stage, or he may withdraw from the contract, providing he does so within three days following the dead line.

If the customer can prove that we are failure to meet the deadline is his own fault, despite fulfilment of work done at a later stage, or if the customer rejects the work done, or withdraws from the contract, in any case he shall be entitled to compensation for real damage at a maximum of 20% of the value of the delayed delivery. Other claims for interruptions to delivery are void.

8. Testing Procedure

Unless a testing procedure has been agreed to, the customer shall test the product himself and give notification of all deficiencies in writing. If the customer fails to give notification within two weeks following the delivery, the functions will be construed to have been fulfilled and delivery approved.

If deficiencies become apparent within the guarantee time limits at a later stage, in spite of careful testing, the customer must notify us immediately in writing. Otherwise the delivery will be construed to be approved of, despite any deficiencies.

Repairs or temporary replacement of goods may be made at the vendor's discretion and without involving any admission of legal liability and without precedent for the future.

9. Guarantee

We guarantee that we shall deliver the product in working order.

We are obliged to fulfil the guarantee by eliminating faults or substituting all the parts that are proved to be damaged in their material-construction and operation, or are unusable.

The goods are guaranteed by us for a period of 1 year from the date of delivery. The place of fulfilment is Pfäffikon. Parts/services not covered by the guarantee will be charged. Deficiencies and faulty parts that we are not responsible for, are not under guarantee. These include everyday wear and tear, acts of God, extraordinary treatment, encroachment by the customer or a third person, over estimated demands, unsuitable operating equipment, or extreme environmental conditions.

We shall produce the guarantee according to his choice at his location or that of the customer, so that we have ready access to perform the guarantee. Disassembly and assembly-, transport-, packaging-, travel and accommodation costs shall be born by the customer. Spare parts shall be considered to be property of us.

Neither recognition of or removal of a deficiency shall interrupt the guarantee or annual delivery date deadlines.

10. Further Liabilities

We are liable within the terms of our company liability insurance for further damage to persons or property, which the customer can prove to be arising as the fault of our company. Any other claims are void.

11. Prices and Conditions of Payment

- a) Our prices are to be understood as net ex works CH Pfäffikon without packaging and transportation costs, customs duties, insurance costs etc. Unless otherwise agreed upon.
- b) Initial verification is not included in the price.
- c) Offers will remain valid for one calendar month.
- d) In the event of price and type changes occurring between the expiry date of the offer and the reception of order, we reserve the right to adjust both the type of goods and prices there-of.
- e) In the event of further services or materials which are not covered by the terms of our offer, any costs arising therefrom will be charged separately.
- f) For orders less than CHF 200.00 a handling fee of CHF 50.00 is charged.

Unless otherwise agreed upon in writing our conditions of payment are net within 30 days without any deductions. The customer shall be able to make demands in return only with the written consent of us, or by producing a legally binding court order, even when the matter concerns the existing contract or an issue in dispute.

If the customer does not keep to the payment deadline, he is obliged to pay without a reminder, interest in default of payment, that shall be four percent over the current discount rate of the Swiss National Bank.

12. Export

The customer is responsible for keeping up with inland and foreign export codes of conduct.

13. Future Sale

Unless there exists an agreement between the parties or the nature of the business does not permit it, the customer shall be able to sell the product with or without alterations.

In case the customer sells the product he must make sure that the purchaser takes on all the obligations specified in the software licence, matters of secrecy as well as conditions of permission affecting the continued use of the product.

14. Proprietary rights

The goods delivered shall remain the property of PESA WAAGEN AG until the purchase price has been fully paid and the purchaser shall, during this period, take all reasonable measures to protect them and maintain them in good order.

15. Place of fulfilment and jurisdiction

All legal relations referred to in this document are bound by Swiss law. The place of fulfilment and jurisdiction for any disputes arising between the parties shall be Zurich/Switzerland.