

## **GENERAL TERMS AND CONDITIONS (TERMS)**

of

PALFINGER AG, Palfinger CIS GmbH, Palfinger EMEA GmbH, Palfinger Europe GmbH,  
Epsilon Kran GmbH and Palfinger Marine GmbH

Version: 3.0

Valid from: 1 June 2017

### **I. SCOPE OF APPLICATION**

1. All quotations, supplies and services of PALFINGER AG, Palfinger CIS GmbH, Palfinger EMEA GmbH, Palfinger Europe GmbH, Epsilon Kran GmbH and Palfinger Marine GmbH, each referred to hereinafter in brief as “Palfinger” or encompassed by the name “Palfinger”, are governed exclusively by the General Terms and Conditions (Terms) below, supplemented by the statutory regulations.
2. The Terms are an integral element of every contract. We hereby expressly object to other general terms and conditions and terms and conditions of purchase of the customer.

### **II. QUOTATION AND CONCLUSION OF CONTRACT**

1. Quotations from Palfinger are non-binding.
2. The customer is bound to an order for a period of 30 days.
3. A binding contract is only formed by a written order confirmation from Palfinger.

### **III. PRICES**

1. The prices quoted and discount rates from Palfinger apply only to the respective individual order. Unless expressly agreed otherwise in writing, prices are net prices excluding VAT, excluding delivery (FCA in accordance with Incoterms 2010), without discount, in euros.
2. If the customer has separate wishes in respect of packaging, these shall be invoiced separately.
3. The prices apply subject to any price increases due to higher production costs, increased customs duties, changes to official exchange rates or other charges. Increases of this kind come under the customer’s duty of payment. No right of withdrawal can be derived from such price increases.

### **IV. PAYMENT TERMS**

1. Palfinger has the right to invoice the (partial) performances ordered upon completion of these.
2. Claims by Palfinger are payable net of deductions immediately after invoicing. Palfinger is entitled to send invoices to the customer electronically.
3. In the event of late payment, the customer shall be obliged to pay interest on late payments in the amount of 8% above the respective base rate of the Österreichische Nationalbank.
4. Palfinger is entitled to make delivery of the goods dependent upon the immediate payment of the total purchase price if
  - the customer is in default of its payment obligations, or

- other circumstances become known which appear likely to substantially reduce the customer's creditworthiness and through which the customer's payment of the outstanding due claim is jeopardised.

In such cases Palfinger shall be entitled to demand immediate payment of all its claims against the customer.

5. In the event of default of payment, the customer undertakes to fully compensate Palfinger for all the reminder charges, costs and cash expenditure associated with the recovery of the claim, so that under no circumstances must Palfinger incur costs for any reason whatsoever from the collection of its claims.
6. The customer shall not be entitled to exercise a right of retention of payment and to set off counterclaims; in particular, claims under warranty or guarantee must not serve as grounds for the retention of due payments.
7. If part payments have been agreed, the entire remaining purchase price shall be payable immediately if the customer is fully or partially in arrears with an instalment for longer than 21 days.

## **V. DELIVERY TERMS AND DELAY**

1. Palfinger makes every effort to adhere precisely to delivery dates. If delivery terms are not expressly agreed as binding, they are non-binding, and should always be taken as the probable date of supply and handover to the customer. However, the customer also undertakes to accept deliveries after the originally agreed delivery date. After the delivery date has been exceeded by a period of 4 weeks, the customer shall have the right to set an 8-week grace period and then declare its withdrawal from the contract.
2. It is a condition of adhering to the delivery dates that all the advance performances to be provided by the customer are received in good time, especially specifications, that vehicle underbodies are delivered in good time, that authorisations or documents are provided by the customer in good time, and that payment terms are complied with, otherwise the delivery date shall be postponed by the duration of the delay that has occurred.
3. Palfinger shall deliver the products "FCA delivery factory" in accordance with Incoterms 2010. The customer shall be responsible for securing the load. The securing of the load shall not take place at the expense and risk of Palfinger.
4. After the completion of the contractual products, the storage of these shall be undertaken by Palfinger both in its own storage areas and those of third parties, at the risk and expense of the customer.
5. Liability for damages due to delay is entirely excluded provided the delivery date is exceeded by no more than 12 weeks.
  - 5.1 If Palfinger exceeds the delivery date by more than 12 weeks, the liability from the delay in delivery shall be restricted to cases of gross negligence or intent, and shall be capped at a maximum of 5% of the order value. In the event of slight negligence, liability by Palfinger is excluded.
  - 5.2 Further claims and rights of customers, such as liability for consequential damage, are excluded.
  - 5.3 The above delimitations do not apply to liability for personal injury.

## VI. RIGHT OF OWNERSHIP

1. The goods delivered shall remain the property of Palfinger until the purchase price has been paid in full, together with all additional charges, interest and costs.
2. If there is an existing current account agreement, the right of ownership shall continue to apply until all the claims stated in this Point have been settled and the entire balance of the current account is covered.
3. In the event of payment arrears, the goods can be collected by Palfinger at any time. In this case, the customer shall be obliged to reimburse Palfinger for the associated transport costs, charges, taxes and customs duties.
4. In the event of the goods being processed, remodelled or combined, Palfinger shall become a joint owner of the new article in proportion to the value of the goods supplied by Palfinger, which the customer shall keep on behalf of Palfinger in this respect.
5. The resale of goods that are subject to the retention of ownership is only permissible provided the retention of ownership is maintained. In this event, at the time of concluding the contract the customer already assigns to Palfinger all rights to which it is entitled from the sale (claims to the purchase price, retentions of title, etc.). At Palfinger's request the customer shall be obliged to hand over all the documents about the resale and invoice all outstanding claims immediately.

## VII. WARRANTY

1. Warranty period
  - 1.1 The warranty period is restricted to 12 months from the delivery to the customer. A warranty is expressly excluded for second hand equipment.
  - 1.2 In the event of defects being rectified by Palfinger, the originally agreed period of 12 months shall not be extended. The warranty period shall only start to run again from the handover when original replacement parts are exchanged.
2. Defects
  - 2.1 It is hereby expressly stated that Palfinger's specifications for product characteristics, in particular capacities, lifting power, weights, operating costs, speeds, should be regarded as approximate values and do not represent properties within the meaning of Section 922 Para. 1 ABGB [*Austrian Civil Code*] and are therefore non-binding.
3. Acceptance of the delivery
  - 3.1 The customer is obliged to inspect the delivered goods immediately and completely. Any defects identified must immediately be reported by phone and by registered letter. If the customer does not comply with this obligation, or does not do so within the deadline set or to the full extent, a claim under warranty for defects of this kind shall be excluded.
  - 3.2 If any defects occur later, the customer must also report these to Palfinger by phone and by registered letter with the same legal consequences.
  - 3.3 If the customer has wrongly reported a defect, Palfinger shall be entitled to invoice the customer for the costs incurred in connection with the inspection undertaken.
4. Other requirements for the utilisation of the warranty
  - 4.1 It is a requirement for the assertion of claims under warranty that the customer has fully followed all the instruction from Palfinger for the handling of the purchase item. It is a further requirement that the customer has used and stored the item properly, and in the event of dispute the customer shall be obliged to furnish proof of this.
  - 4.2 In the event of the assertion of claims under warranty, the customer shall be obliged to grant a period of at least 6 weeks for improvement. The customer shall only have claims to replacement, price reduction or rescission subject to the provision that all the attempts at improvement undertaken within an appropriate

period are fruitless, with the restriction that rescission of the contract is not possible in the case of negligible defects. Insofar as possible the customer is obliged to support Palfinger in the execution of its warranty obligations and to observe all instructions from Palfinger in this respect.

- 4.3 All claims under warranty shall expire if changes are made to the goods by third parties or by installing third-party parts.
- 4.4 The place of performance for all warranty claims is Salzburg.
- 4.5 The customer is not entitled to undertake self-repairs on the purchase item, otherwise the customer shall lose all claims to compensation and all warranty claims.
- 4.6 Claims under warranty expressly exclude natural wear and tear, and damage ascribable to negligence, inappropriate handling and/or accidents.
- 4.7 The warranty period shall expire in the event of resale or transfer within the warranty period.

### **VIII. LIABILITY**

1. Compensation claims against Palfinger on the basis of material damage shall exist only in the event of grossly negligent or intentional behaviour by Palfinger. Liability by Palfinger for consequential damage of any kind, also including the retention of deliveries due to unpaid counterclaims, and any lost profits are entirely excluded.
2. In the event of unpreventable events or force majeure, as well as work stoppages, strikes, disruption of operations, transport problems etc. Palfinger can reduce the delivery accordingly or withdraw entirely from the contract without the customer being entitled to claims for damages on account of this. In the case of a temporary disruption of this kind, Palfinger shall be entitled also to provide the delivery within an appropriate period of time after this disruption is over.
3. Product liability claims for damage to operationally used articles belonging to companies are excluded. The goods shall be acquired or hired by the customer within the scope of its company.
4. The products only offer such safety as can be expected on the basis of the approval regulations, operating instructions, the stipulations of the supplier or company on handling the product, and in respect of the prescribed inspections and other information with careful and diligent handling. The customer is forbidden to present the goods in such a way that any safety expectation over and above this can arise.

### **IX. ACCEPTANCE / DEFAULT OF ACCEPTANCE**

1. If the acceptance of the goods or completion of the work is delayed by circumstances on the part of the customer, the goods shall be stored at the customer's risk and expense. It is hereby agreed that the storage fee shall be double the amount that is usual locally for licensed warehouse keepers. The work shall be suspended until the customer pays the entire purchase price together with any ancillary claims. The customer shall not have any claims to damages as a result of delay in this respect, and must reimburse the additional costs thus incurred before the work is restarted.
2. In the event of default of acceptance or the goods being placed in storage by Palfinger, the customer shall only still have a right to the goods being released on payment of all claims, especially also the entire storage charge.
3. Default of acceptance shall also occur in the event of the customer's creditworthiness or ability to pay being in doubt. In this case Palfinger shall be entitled to request a bank guarantee at the customer's expense.

## **X. PLACE OF JURISDICTION AND APPLICABLE LAW**

1. It is hereby agreed that the court with competence for the matter in Salzburg shall exclusively be the place of jurisdiction for any disputes arising from the business relations between the contracting parties.
2. Austrian substantive law shall be applicable to the business relations between the contracting parties, with the exclusion of the UN Convention on Contracts for the International Sale of Goods and the exclusion of the rules of private international law.

## **XI. SEVERABILITY CLAUSE**

If provisions of an agreement between Palfinger and the customer should be or become invalid or unenforceable, the remaining provisions of these Terms shall remain unaffected by this. In this event, those provisions which achieve the intended purpose as well as possible shall be deemed to be agreed instead of the invalid or unenforceable provisions.

## **XII. MISCELLANEOUS**

1. In order to be valid, side agreements or modifications extending beyond these Terms require the written confirmation of the bodies authorised to represent Palfinger with Palfinger's authorised signature.
2. The customer hereby confirms that it knows of the Code of Conduct published on [www.palfinger.com](http://www.palfinger.com) and declares that it shall abide by the provisions of this.