

**General Terms and Conditions of Sale  
and Delivery - Contractors of the  
Pongratz Trailer-Group GmbH**

**1. Scope and Coverage**

- 1.1 All consultations, other services, conclusions of contracts and contractual declarations as well as offers, purchase- and delivery transactions of the Pongratz Trailer-Group GmbH (hereafter gender neutral "seller") with contractual partners (hereafter gender neutral "buyer") are exclusively subject to these general terms and conditions of sale and delivery (hereafter "GTS").
- 1.2 These GTS apply to all contracts concerning goods that are to be marketed by the seller, irrespective of whether these goods are produced by the seller or by suppliers of the seller.
- 1.3 In the event of an ongoing business relationship with a buyer, these GTS also apply to future contracts, even if these are not expressly referred to.
- 1.4 All business relationship on the basis of these GTS take place exclusively with companies in the sense of the Austrian Commercial Code. These GTS do expressly not apply to conclusions of contracts with consumers in the sense of the consumer protection law.
- 1.5 General terms and conditions opposed to or contradicting these GTS are expressly rejected. They do not become part of the contract, unless the seller acknowledges their validity expressly and in writing.
- 1.6 The respective GTS valid at the time of the conclusion of the contract with the seller shall apply. They are available under  
*<http://www.pongratztrailers.eu/terms-conditions>*.

**2. General**

- 2.1 All information, descriptions, depictions and drawings, as well as technical data such as measurements and weight specifications are approximate values, irrespective of the medium (homepage, brochures, price lists, advertisements etc.) used to publish them. Only information expressly listed as binding in the order confirmation is exempt.
- 2.2 The price lists, offers and quotes published by the seller are not binding.
- 2.3 The seller can subsequently correct obvious mistakes or errors in quotations, payment- and delivery terms as well as goods and their descriptions without legal consequences.
- 2.4 All documents made available by the seller, such as brochures, price lists, photos, logos, as well as plans and drawings, must not be passed on to third parties without the seller's written consent.
- 2.5 The seller expressly reserves the right to make changes to the goods with regards to shape and / or construction, insofar as this does not significantly change the delivery item and its appearance and functionality.

**3. Conclusion of contract**

- 3.1 The purchase offer is binding for the buyer for a period of 4 weeks.
- 3.2 The seller has the right to accept the purchase offer which is binding for the buyer or to decline it without giving reasons.
- 3.3 The contract is considered concluded once the buyer's offer has been accepted by the seller in writing.

- 3.4 Acceptance takes place by means of a written order confirmation by the seller, whereby an email qualifies as the written form.
- 3.5 The buyer must examine the order confirmation promptly. If there is no written objection to the seller within a period of eight days, the order will be carried out in accordance with the contents of the contract.
- 3.6 If the services go beyond the agreed scope, the seller is entitled to invoice the respective amount separately.
- 3.7 The seller's sales employees are in charge of the tasks of sales negotiations and ongoing customer service. All agreements concerning prices as well as payment- and delivery terms etc. made by the seller's employees shall only be binding for the seller after written order acceptance, accordingly the seller also reserves the right to change the contract terms. Pongratz Trailer-Group GmbH reserves the right to the conclusion of the contract according to civil law as well as from an economic point of view.
- 4.4 The seller expressly reserves the right to assert damages exceeding the cancellation fee.

## 5. Prices and costs

- 5.1 All prices listed by the seller in current price lists and offers are not binding and shall be ex factory and excl. freight, postage, insurance, packaging and any other delivery costs plus the statutory value added tax applicable at the time of invoicing, unless otherwise agreed in writing.
- 5.2 The prices and costs in accordance with the order confirmation by the seller shall be considered agreed between the buyer and the seller.
- 5.3 The prices and costs are based on the seller's purchasing and manufacturing costs at the time of the conclusion of the contract. In the event of an increase in these prices and costs by the time of delivery due to reasons which are not the seller's fault, the seller is entitled to increase the prices and costs unilaterally with reasonable discretion (§ 1056 ABGB). The seller shall notify the contractual partner of the increase.

## 4. Cancellation by the seller

- 4.1 As a matter of principle, cancellation of an order accepted by the seller is only possible with the seller's written consent.
- 4.2 As a result of such a cancellation of a contract, the seller is entitled to invoice the buyer for a cancellation fee of 50% of the gross sales price to cover the seller's expenses and loss of profit within 3 weeks before the agreed delivery date.
- 4.3 In the event of cancellation of special manufacture by the buyer, the seller is entitled to charge a cancellation fee of 50% of the gross sales price within 4 weeks before the announced delivery date, thereafter 80% of the gross sales price.
- 5.4 In the event a delivery is made over 3 months after order confirmation without the seller's fault, the seller also reserves the right to unilaterally increase prices and costs.
- 5.5 Fees and other public levies, established, added or changed after conclusion of the contract and directly or indirectly concerning the contents of the contract shall be borne by the buyer.
- 5.6 In the event of subsequent orders the seller is not bound to previously agreed prices and costs.

## 6. Payment terms, interest, offsetting prohibition

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| <p>6.1 All payments must be made to the seller exclusively in EURO.</p> <p>6.2 Unless otherwise agreed in writing, payment of the goods must be made in cash in full and without deductions upon collection of the goods by the buyer.</p> <p>6.3 If a deposit was agreed between the buyer and the seller, the deposit must be made within three days after receipt of the order confirmation, otherwise the seller is entitled to withdraw from the contract without setting a grace period.</p> <p>6.4 Cheques and other means of payment shall only be accepted in lieu of payment, not in lieu of performance. Such payments shall be considered settled once these cheques and means of payment have been cashed in. Any expenses in connection with such payment methods shall be borne by the buyer. There is no liability on the seller's part with regards to timeliness of cashing in, protest, notification and return of the means of payment not cashed in.</p> <p>6.5 In the event of non compliance with the payment deadline agreed in point 6.2, interest on arrears of 12% shall be understood as agreed, unless the seller provides proof of a higher damage.</p> <p>6.6 All payments shall be in discharge of liabilities only if made directly to the seller.</p> <p>6.7 As a matter of principle, payments are settled in respect of incidental expenses first, then interest and only thereafter capital claims resulting from the delivery.</p> <p>6.8 If it turns out after conclusion of the contract that the buyer's financial situation harbours the risk that he is not able to meet his contractual obligations, the seller is entitled to demand advance payments or securities arising out of all contracts and to refuse fulfilment of the contracts until such advance payment has been made or the security has been lodged.</p> | <p>6.9 In the event of a payment delay by the buyer, the seller is entitled to either insist on fulfilment of the contract and retain fulfilment of their own obligations until payment of the outstanding receivables has been made, or make use of an appropriate extension of the delivery deadline, or declare the outstanding amount due and payable.</p> <p>6.10 Non-compliance with the payment terms or circumstances that justify serious doubts in the contractual partner's creditworthiness lead all outstanding receivables becoming due and payable immediately, without the need for express demand for payment to become due and payable by the seller. In this case the seller is furthermore entitled to demand advance payment for outstanding deliveries and to withdraw from the contract after unsuccessful expiry of an appropriate grace period.</p> <p>6.11 The defaulting buyer undertakes to compensate the seller for all costs in connection with the payment delay, under which title whatsoever they arise.</p> <p>6.12 In case of a number of outstanding payment liabilities on the part of the buyer, the seller is entitled to use incoming payments for full or partial payment of the buyer's individual liabilities.</p> <p>6.13 Expressly awarded terms of payment and other payment terms agreed in favour of the buyer are only considered agreed on condition that the buyer meets all obligations in accordance with the contract. In the event of a payment delay with regards to one of a number of liabilities, the seller is therefore entitled to declare all outstanding payments arising out of other orders of the customer due and payable immediately and in full.</p> <p>6.14 The buyer is not entitled to retain payments, for whatever reason.</p> <p>6.15 Offsetting against the seller's claims by means of counter claims by the</p> |
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contractual partner shall be excluded unless the counter claims have been expressly agreed by the seller in writing or declared legally binding by a court ruling.

## **7. Delivery and acceptance obligations**

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| <p>7.1 Information concerning delivery dates and deadlines are only approximate and not binding.</p> <p>7.2 As a matter of principle, the agreed delivery dates are considered legally binding if they are recorded as such in the order confirmation. Insignificant and minor deviations from the foreseen delivery dates, however, are considered expressly approved by the seller.</p> <p>7.3 The buyer is obliged to accept the goods and deliveries made available by the seller.</p> <p>7.4 The course of an agreed delivery deadline is determined as follows: Beginning after receipt by the seller of all documents required for fulfilling the order, the possible full deposit by the buyer and the timely provision of materials by the contractual partner, to the degree this has been agreed.</p> <p>7.5 The delivery deadline is dormant as long as the buyer is in default with a payment that is due - even on the basis of another obligation resulting from the business relationship.</p> <p>7.6 In the event of requests for changes and additions by the buyer made after conclusion of the contract, the buyer declares his express consent regarding a potential extension of the delivery periods.</p> <p>7.7 All agreements as well as deviations from delivery terms require the seller's express written consent.</p> <p>7.8 The occurrence of a delayed delivery is determined by the valid statutory provisions. The enforcement of such a</p> | <p>delivery delay requires a written reminder addressed to the seller by the buyer as well as setting an appropriate grace period. In the event of simultaneous written threat of withdrawal, the buyer can withdraw from the contract after fruitless expiry of the grace period.</p> <p>7.9 Claims for compensation of damages by the buyer as a result of delayed deliveries or non-fulfilment are expressly excluded.</p> <p>7.10 Unless otherwise agreed between buyer and seller, delivery takes place ex factory with simultaneous transfer of risk to the buyer. By means of making the goods available, the delivery is considered accepted.</p> <p>7.11 The delivery deadline is also considered met in the event of timely notification that the goods are ready for delivery, if delivery was expressly agreed.</p> <p>7.12 Alleged defects do not entitle the buyer to refuse acceptance.</p> <p>7.13 In the event of a delay of acceptance on the part of the buyer, if he abstains from an act of cooperation or our delivery is delayed for other important reasons attributable to the buyer, the risk of accidental loss of the purchased item shall pass to the buyer. The buyer is obliged to compensate the seller for any resulting damage including additional expenditure (e.g. storage costs) upon the seller's request. The seller's right to declare the fee for the delivery due and payable or to withdraw from the contract after an appropriate grace period and/or to claim compensation for damages remains unaffected.</p> <p>7.14 Events of force majeure entitle the seller to delay the delivery for the duration of the impediment and an appropriate initial phase or to withdraw from the contract in part or in full with regards to the part not yet fulfilled. Force majeure includes strike, lockout or unforeseeable, unavoidable circumstances, e.g.</p> |
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operational breakdowns making timely delivery impossible for the seller despite reasonable efforts. The same applies in the event the above mentioned impediments occur during a delay by the seller or one of the seller's sub-contractors.

- 7.15 The contractual partner is not entitled to refuse partial deliveries by the seller.

## **8. Packaging, shipping, transfer of risk and insurance**

- 8.1 In any event, loading and shipping take place at the buyer's expense and risk - even in the case of freight-free delivery. Upon shipping of the goods, the risk passes on to the buyer already at the time the seller notifies the buyer with regards to readiness for shipping of the delivery.

- 8.2 The seller is not obliged to insure the delivery against possible risks. If the buyer requests insurance, the buyer must take care of it and bear all costs associated with the insurance.

## **9. Retention of title**

- 9.1 The seller retains the title to the goods made available until full payment of the purchase price by the buyer has been made (hereafter "reserved goods").

- 9.2 If the goods are handed over to the buyer before full payment of the purchase price, they remain the seller's property until payment of all receivables resulting from the business relationship with the buyer - irrespective of country-specific deviations.

- 9.3 The reserved goods must not be changed or processed under any circumstances before full payment has been made, leasing of the goods is not permitted either.

- 9.4 In the event the buyer changes or processes the reserved goods in breach of the provisions under point 9.3, the seller

remains the sole owner of the reserved goods and is entitled to claim compensation of damages from the buyer.

- 9.5 The reserved goods must not be pledged to third parties or transferred as a security either.

- 9.6 The seller must be notified immediately in writing of any change in location of the reserved goods.

- 9.7 The seller is entitled to inspect the reserved goods owned by him during the buyer's business hours.

- 9.8 In any event, the buyer is obliged to look after the reserved goods as long as ownership in the goods has not been transferred to him. In particular, he must ensure that high-quality goods are sufficiently insured at the original value and transfers the future reimbursement claims to the seller as a precaution and the seller shall accept this transfer.

- 9.9 The buyer is only permitted to sell the goods in the course of his regular business activities. In the event of a resale, the buyer hereby transfers claims arisen to him as a result of the resale and other justified claims against the purchaser with all ancillary rights to the seller until fulfilment of the seller's claims. The buyer undertakes to make a respective note in his accounts and on his invoices. The seller herewith accepts the transfer.

- 9.10 After transfer, the seller is authorised to collect the receivable. The seller reserves the right to collect the receivable himself, as soon as the contractor does not duly meet his payment obligations and is in defaults of payment.

- 9.11 Upon the seller's request, the buyer is obliged to immediately provide any information and hand over documents

required to exercise the seller's rights versus the purchasers, to the seller.

buyer complained immediately after discovery.

9.12 If the seller does not make use of his retention of title in accordance with the above mentioned provisions by taking back the reserved goods, the seller is entitled to sell the goods privately or have them auctioned. Taking back the reserved goods is carried out at the revenues generated, at a maximum of the agreed fee. Further claims for compensation of damages, in particular loss of profit are reserved.

10.5 Notices of defects must be asserted without delay in writing by means of a recorded letter.

10.6 Unauthorised post-processing and improper handling by the contractual partner result in the loss of all warranty claims and claims for compensation.

10.7 Abrasion or wear and tear within the normal scope does not lead to warranty claims.

9.13 Taking back the reserved goods is carried out at the revenues generated, at a maximum of the agreed fee. Further claims for compensation of damages, such as return transport costs and in particular loss of profit are reserved.

10.8 In the event of justified and recognised complaints, the seller warrants for defects of the goods at the buyer's option by means of improvement or by means of subsequent or replacement delivery within a deadline to be determined by the seller. As a result the right to price reduction shall be excluded.

## **10. Warranty**

10.1 The buyer must inspect the delivered goods for defects within an appropriate period and notify the seller in writing of these defects within a period of 1 week from receipt of the goods, otherwise assertion of the warranty claim will be excluded. Timely dispatch shall suffice for observance of the deadline.

10.9 If improvement, subsequent or replacement delivery is not possible or expressly not desired by the seller, the buyer is entitled to reduction in value or transformation.

10.2 The buyer must immediately complain about transport damages visible from the outside upon receipt of the goods to avoid loss of his warranty rights and have this confirmed by the freight carrier on the freight papers (delivery note and CMR).

10.10 The seller only warrants for parts not manufactured by him in the form in which the manufacturer of these parts provides a warranty to the seller.

10.3 The above mentioned retention with regards to changes in shape and construction does not entitle the buyer to complain, neither do standard or technical deviations with regards to measurements, equipment, material or colour.

10.11 The full burden of proof for all conditions for claims, in particular for the defect itself, for the time the defect was discovered and for timeliness of the notice of defects lies with the buyer. Reversal of the burden of proof as in § 924 para 2 ABGB shall be excluded.

10.4 The warranty obligation in the event of hidden defects shall only be borne by the seller if these defects already existed upon acceptance of the goods and the

10.12 The buyer has a deadline of six months from delivery of the goods (in accordance with point 7.10) to avoid preclusion, for legal assertion of the buyer's warranty claims against the seller.

## **11. Liability**

- 11.1 The seller shall be liable - with the exception of personal damage - for intentional or grossly negligent behaviour only.
- 11.2 The seller shall furthermore not be liable - with the exception of personal damage - for indirect damages or consequential damages or for loss of profit, this also applies to other claims for compensation of damages, in particular those for positive breach of contract.
- 11.3 The same principles as in points 11.1 and 11.2 shall apply with regards to liability of performing and vicarious agents.
- 11.4 Claims for compensation of damages against the seller must be made within six months from discovery of the damage and liable party, to avoid preclusion, at the latest, however, within three years after the event that is the basis for the claim, by judicial process.

## **12. Guarantee**

- 12.1 Guarantees granted by the seller to the buyer require an express written agreement.
- 12.2 The period of a granted guarantee starts upon delivery of the goods in accordance with point 7.10, it applies within the agreed guarantee period on condition that the delivery item must not be changed and not used other than for the intended purpose, and is serviced in accordance with the service recommendations given by us.
- 12.3 Any claims under guarantee must be asserted without delay after discovery of the defect in accordance with point 10.5.

- 12.4 Structures and facilities not directly delivered by us as well as damages resulting from normal wear and tear or improper handling and operation, non-observance of operating instructions as well as other notes and provisions as well as in the case of repairs carried out by the customer or third parties, are expressly excluded from the guarantee.

## **13. Withdrawal from the contract**

- 13.1 In the event the buyer does not meet his contractual obligations, the seller is entitled to withdraw from the contract. If the withdrawal is the result of the buyer's behaviour, the buyer must compensate the seller for all costs already incurred as well as other damages.
- 13.2 The seller is furthermore entitled to withdraw from the contract early for important reasons and without observing a notice period, in particular if
  - the buyer's financial situation seems questionable to the seller;
  - the buyer's company is liquidated,
  - seizures are carried out with regards to the buyer's assets;
  - the buyer has fallen behind with regards to the binding obligations under the contract despite setting of an appropriate grace period including the threat of termination of the contract for 6 weeks;
  - the agreed retention of title is asserted or exercising the retention of title is a real threat due to the buyer ;
  - the contractual partner provided incorrect or incomplete information or withheld important circumstances in the course of the initiation of business contacts that would have kept the seller from concluding a contract.
- 13.3 In the event of such an early withdrawal from the contract, the buyer is not entitled to make claims for compensation of damages or other claims. He is obliged to return the goods to a location specified by the seller within a period specified by the seller or to make them available for collection in a transportable way at his risk and expense.

13.4 In the event the buyer does not meet this obligation without delay, the seller is entitled to arrange return at the buyer's risk and expense. The seller reserves the right to any claims for compensation of damages in the event the buyer is at fault.

**14. Place of fulfilment, applicable law and place of jurisdiction**

14.1 Unless other agreements have been made between the contractual partners, 8772 Traboch shall be the place of fulfilment, even if the goods are to be handed over in another location in accordance with the agreement.

14.2 Austrian law under exclusion of its reference provisions and the UN convention on the international sale of goods shall apply with regards to all legal disputes with the seller concerning concluded contracts. German is the contractual language.

14.3 The competent court in 8700 Leoben is agreed as the court exclusively responsible for disputes arising directly or indirectly from the contract concluded between the seller and the buyer.

**15. Declaration of consent in accordance with DSG and TKG**

The following information made available by the buyer: Name, company, address, phone number, email address may be

stored, processed and used by the seller for his own marketing purposes.

**16. Other**

16.1 Written declarations are considered received if they are sent to the last address provided by the buyer.

16.2 The buyer reserves the exclusive right to make editorial changes to these general terms and conditions. As a matter of principle, the buyer foregoes a duty of notification, but he will be notified by the seller of major changes prior to the conditions coming into force.

16.3 In the event one or several of the provisions contained in these GTS is / are ineffective or unenforceable, the validity of the remaining provisions shall remain unaffected. The ineffective or unenforceable provision shall be replaced by an effective and enforceable provision realising the economic purpose of the first provision as much as possible. The same applies to unintentional contractual gaps.

16.4 Additional agreements, changes and additions to the respective contract require written confirmation by the seller to become effective. Any deviation from these GTS as well as the formal requirements contained therein require a written agreement between the buyer and the seller.