

Sales & Delivery Conditions

1 General - scope of application

- 1.1. The Terms of Sale of **Petrotest GmbH** (hereinafter **Petrotest**), Ludwig-Erhard-Ring 13, 15827 Dahlewitz, shall apply exclusively; the Purchaser's conflicting terms or terms deviating from the Terms of Sale shall not be recognized unless **Petrotest** expressly consents to their application in writing. The **Petrotest** Terms of Sale shall also apply if **Petrotest** in awareness of the Purchaser's conflicting terms or terms deviating from its Terms of Sale executes the order unconditionally.
- 1.2. All agreements concluded between **Petrotest** and the Purchaser for the purpose of the execution of this contract are set out in writing in this contract.
- 1.3. The **Petrotest** Terms of Sale shall only apply to entrepreneurs within the meaning of Sec. 310 Para. 1 of the Civil Code.
- 1.4. **Petrotest®** shall be entitled to process personal data within the limits of what is permissible pursuant to the Federal Data Protection Act – the Purchaser hereby waiving the right to be notified thereof – and to communicate such data to the departments within the enterprise affected by the execution of the contract, to the extent that such is necessary for the execution of the contract. Within the same limits, **Petrotest** can communicate such data to the credit insurance company with which it has concluded a credit insurance concerning a transaction agreed with the Purchaser.

2 Offer - Scope of performance

- 2.1. An offer by **Petrotest** shall be without obligation unless the contrary follows from the confirmation of order. If the Purchaser places an order, it shall be bound by such order for 4 weeks.
- 2.2. **Petrotest** reserves title and copyright to illustrations, drawings, calculations and other documentation: This shall also apply to such written documentation identified as "confidential". The Purchaser shall require the express written consent of **Petrotest** before communicating such to third parties.
- 2.3. In the case of products specifically manufactured for the Purchaser, departures from the quantity ordered of up to +/- 10% shall be permissible if such is caused by technical reasons and is unavoidable, and if the Purchaser can reasonably be expected to accept such. **Petrotest®** also reserves the right to make changes to the design, choice of material, specifications and type of construction even after the confirmation of order has been sent, if such changes are in conflict neither with the confirmation of order nor with the Purchaser's specifications. Part deliveries shall be permissible.
- 2.4. Unless agreed otherwise, the Purchaser shall bear the costs for the shipping and return of the object of delivery and its packaging.

3 Prices - terms of payment

- 3.1. Unless the contrary follows from the confirmation of order, the **Petrotest** prices shall be "ex works" exclusive of packaging; the latter shall be charged separately.
- 3.2. **Petrotest** reserves the right to adjust its prices accordingly if after conclusion of the contract reductions or increases in costs occur, in particular on the basis of collective wage

agreements or changes in the prices of materials. **Petrotest** shall provide the Purchaser with proof thereof on demand.

- 3.3 Statutory value added tax is not included in the **Petrotest** prices; it shall be stated separately in the invoice at the statutory rate applicable on the date of invoicing.
- 3.4 Deduction of discounts shall require a separate written agreement.
- 3.5 Unless the contrary follows from the confirmation of order, the purchase price shall be payable net (without deductions) within 30 days after date of invoice. The statutory provisions concerning the consequences of payment default shall apply.
- 3.6 **Petrotest** only accepts bills of exchange and cheques on account. In such cases, the payment obligation is only satisfied upon the crediting of the full amount of the claim in question. The Purchaser shall bear the costs incurred as a result of the payment by cheque or bill of exchange.
- 3.7 If there is a significant deterioration in the creditworthiness of the customer applying to the time of submission of the offer or order confirmation, the supplier reserves the right to refuse delivery until the customer has fulfilled outstanding obligations or supplied adequate security.
- 3.8 The Purchaser shall only be entitled to a right of set-off if its counterclaims have been determined with final legal effect, are undisputed or have been acknowledged by **Petrotest**. In addition, it shall only be entitled to exercise a right of retention if the counterclaim is based on the same contractual relationship.

4 Deliver period

- 4.1. The start of the delivery period specified by **Petrotest** shall require the prior clarification of all technical issues.
- 4.2 **Petrotest's** compliance with its obligation to supply shall also require the timely and correct performance of the Purchaser's obligations. The defence of non-performance of the contract shall remain reserved.
- 4.3 If the Purchaser is in acceptance default or culpably infringes other obligations to participate, **Petrotest** shall be entitled to claim reimbursement of any resulting losses it incurs as a result, including any additional expenditure. **Petrotest** reserves the right to lodge more extensive claims.
- 4.4. If the preconditions of 4.3 are satisfied, the risk of accidental loss or accidental deterioration of the purchased object shall transfer to the Purchaser at the time when it defaults on acceptance or performance.
- 4.5 The delivery period agreed between **Petrotest** and the Purchaser shall be complied with if by the end of such period the goods to be supplied have left the works, or if readiness to deliver has been notified.
- 4.6 If after notification of readiness to deliver the Purchaser requests a later delivery in departure from the agreed delivery date, it shall pay the costs resulting from the additional storage of the goods, at least 0.5% of the invoice amount for each month or part thereof of the storage period.
- 4.7. **Petrotest** shall be liable pursuant to the statutory regulations if the underlying purchase contract is a fixed transaction within the meaning of Sec. 286 Para. 2 No. 4 of the Civil Code or Sec. 376 of the Commercial Code. **Petrotest** shall also be liable pursuant to the statutory regulations to the extent that as a result of a delivery default for which it is responsible the Purchaser is entitled to claim that it no longer has an interest in the further performance of the contract.

- 4.8. **Petrotest** shall also be liable pursuant to the statutory regulations if the delivery default is due to a deliberate or grossly negligent breach of contract for which it is responsible; fault by its representatives or vicarious agents shall be ascribed to **Petrotest**. If the delivery default is not due to a deliberate breach of contract for which it is responsible, its liability for damages is limited to the foreseeable damage typically occurring.
- 4.9. **Petrotest** shall also be liable pursuant to the statutory regulations if the delivery default for which it is responsible is based on the culpable infringement of an essential contractual obligation; in such cases, however, its liability for damages is limited to the foreseeable damage typically occurring.
- 4.10. For the rest, **Petrotest** shall in the event of a delivery default be liable for the payment of liquidated damages for default to the amount of 0.5% of the value of the delivery for each complete week of the default, up to a maximum of 5% of the value of the delivery.
- 4.11. The Purchaser's additional statutory claims and rights shall remain reserved.

5 Transfer of risk - insurance

- 5.1. Unless the contrary follows from the confirmation of order, the delivery is agreed to be "ex works".
- 5.2. If the Purchaser wishes, **Petrotest** shall insure the delivery against transport damage, breakage, theft and other losses. The costs for such shall be borne by the Purchaser.

6 Warranty and Liability for defects

- 6.1. The Purchaser's claims based on defects shall be subject to the Purchaser's due compliance with its duties to inspect and complain pursuant to Sec. 377 of the Commercial Code.
- 6.2. If there is a defect in the purchased goods, **Petrotest** shall at its choice be obliged to make good the faulty performance by means of the elimination of the defect or the delivery of a new defect-free item. In the case of the elimination of the defect, **Petrotest** shall be obliged to bear all expenditure necessary for the purpose of eliminating the defect, in particular transport, travel, labour and material costs, except to the extent that such have increased by the fact that the purchased goods have been moved to a place other than the place of performance.
- 6.3. If the attempt to make good the faulty performance fails, the Purchaser shall at its discretion be entitled to demand withdrawal from the contract or reduction of the purchase price.
- 6.4. **Petrotest** shall be liable without limit in cases of injury to life, body or health.
- 6.5. **Petrotest** shall also be liable without limit if the Purchaser asserts claims for damages based on intent or gross negligence, including the intent or gross negligence of **Petrotest's** representatives or vicarious agents. If **Petrotest** is not guilty of a deliberate breach of contract, the liability for damages shall be limited to the foreseeable damage typically occurring.
- 6.6. In cases of simple negligence, **Petrotest** shall only be liable in the event of an infringement of contractual fundamental obligation or an essential obligation the infringement of which endangers the attainment of the contractual purpose. In such cases, the liability for damages shall be limited to the foreseeable damage typically occurring.
- 6.7. If the Purchaser is entitled to reimbursement of losses instead of performance, **Petrotest's** liability shall, including within the limits of 6.3, be limited to the reimbursement of the foreseeable damage typically occurring.
- 6.8. The aforesaid shall not affect liability under the Product Liability Act.

- 6.9 Liability shall be excluded unless the contrary is regulated in the above provisions.
- 6.10 The limitation period for claims based on defects shall be 12 months, starting from the transfer of risk.
- 6.11 The aforesaid shall not affect the limitation period in the event of recourse to the Supplier pursuant to Secs. 478 and 479 of the Civil Code, which shall be five years starting from the delivery of the defective item.

7 Total liability

- 7.1. Irrespective of the legal nature of the claim asserted, liability for damages going beyond that provided for in Section 6 shall be excluded. This shall apply in particular to claims for damages based on culpa in contrahendo, on other breaches of duty or tort-based claims to refund of damage to property pursuant to Sec. 823 of the Civil Code.
- 7.2 The limitation under 6.7 shall also apply if the Purchaser claims refund of wasted expenditure instead of performance in place of a claim for reimbursement of the loss.
- 7.3 Where **Petrotest's** liability for damages is excluded or limited, such shall also apply to claims for personal damages against its employees, workers, staff, representatives and vicarious agents.

8 Securing reservation of title

- 8.1. **Petrotest** reserves title to the goods purchased until receipt of all claims that have arisen up to the time of the conclusion of this contract, including all claims based on follow-up orders, subsequent orders, orders for spare parts. If the Purchaser acts in breach of the contract, in particular is in payment default, it shall be entitled to repossess the goods purchased. The repossession of the goods by **Petrotest** shall constitute withdrawal from the contract. After repossessing the goods, it shall be entitled to realise them elsewhere, and the proceeds from such realisation shall be offset against the Purchaser's liabilities, following deduction of reasonable realisation costs.
- 8.2 The Purchaser shall be obliged to handle the purchased goods with care; in particular, it shall be obliged at its own expense to insure them sufficiently at replacement value against fire, water and theft damage. If maintenance and inspection work are necessary, the Purchaser shall effect such at its own expense in good time.
- 8.3. In the event of attachment or other interventions by third parties, the Purchaser shall notify **Petrotest** thereof immediately in writing to enable the latter to file an action pursuant to Sec. 771 of the Code of Civil Procedure. If the third party is unable to reimburse **Petrotest** for the judicial and extra-judicial costs of an action pursuant to Sec. 771 of the Code of Civil Procedure, the Purchaser shall be liable for the loss incurred by **Petrotest**.
- 8.4. The Purchaser shall be entitled to resell the goods purchased in the ordinary course of business; however, it hereby assigns to **Petrotest** all receivables to which the Purchaser is entitled against its purchasers or third parties on the basis of the resale, up to the amount of the final sum of the invoice (including VAT) of its claim, irrespective of whether the goods purchased are resold without or after processing. The Purchaser shall remain empowered to collect such receivable even after such assignment. The aforesaid shall not affect **Petrotest's** right to collect the receivable itself. However, it undertakes not to collect the receivable as long as the Purchaser fulfils its payment obligations from the proceeds received, does not come into payment default and in particular no application is filed for the commencement of composition or insolvency proceedings or the Purchaser ceases to make payments. If such occurs, however, **Petrotest®** shall be entitled to demand that the Purchaser notifies it of the assigned receivables and the debtors concerned, provides all details needed to collect the

claims, delivers the pertinent documents and notifies the debtors (third parties) of the assignment.

- 8.5. Processing or conversion of the purchased goods by the Purchaser shall be effected for **Petrotest**. If the purchased goods are processed with other goods to which **Petrotest** has no title, it shall acquire joint title of the new product in the same ratio as the ratio between the value of the goods purchased (total invoice amount plus value added tax) and that of the other goods processed at the time of such processing. With respect to the product resulting from the processing, the same shall apply as to goods delivered subject to reservation of title.
- 8.6. If the goods purchased is mixed inseparably with other goods to which **Petrotest** has no title, **Petrotest** shall acquire joint title of the new product in the same ratio as the ratio between the value the goods purchased (total invoice amount plus value added tax) and that of the other goods processed at the time of such mixing. If such mixing is effected in such a way that the Purchaser's goods are to be regarded as the main goods, it is deemed to be agreed that the Purchaser shall assign to **Petrotest** pro rata joint title; the Purchaser shall hold the sole title or the joint title for **Petrotest**.
- 8.7. To secure **Petrotest's** claims, the Purchaser shall also assign to **Petrotest** the receivables to which it is entitled against a third party on the basis of the combination of the goods purchased with a plot of land.
- 8.8. **Petrotest** undertakes, at the request of the Purchaser, to release the collateral to which it is entitled if the realisable value of the collateral exceeds the claims to be secured by more than 10%; the choice of the collateral to be released shall lie with **Petrotest**.

9 Miscellaneous provisions

- 9.1. The Supplier's separate provisions shall apply to erection, assembly and repair work. Such provisions shall be made available if corresponding services are included in the performance.
- 9.2. If the Purchaser is a merchant, the legal venue shall be the place of the registered office of **Petrotest**; however, **Petrotest** shall also be entitled to file an action against the Purchaser at the court with jurisdiction for its place of residence.
- 9.3. German law shall apply exclusively. The application of the UN law on sales is excluded.
- 9.4. Unless the contrary follows from the order, the place of performance shall be the registered office of **Petrotest**.

10 Return of electrical appliances (Electrical Appliances Act)

- 10.1. If the Purchaser is an end customer acting commercially, **Petrotest** shall dispose at its own expense of such appliances that it has put into circulation in the member states of the European Union since 13 August 2005 and that are returned to it carriage paid. **Petrotest** shall be informed in writing of the end of use.
- 10.2. Appliances and accessories put into circulation in the member states of the European Union since 13 August 2005 by **Petrotest** shall not be resold or otherwise disposed of to private persons. In the event of an infringement of this prohibition on further disposal, the customer shall assume responsibility for the disposal of the appliances or accessories concerned in accordance with the legislation and guidelines in force in the country in question.