

# General conditions of sale and delivery of PANOLIN International Inc.

## 1. Scope of Application

**1.1.** All contracts and agreements with PANOLIN International Inc., Blaesimuehle 2 – 6, 8322 Madetswil, Switzerland, registration number (UID) CHE-189.862.392 (hereinafter called PANOLIN), concerning the sale and delivery of products are subject to these General Terms and Conditions of Sale and Delivery.

## 2. Tender

**2.1.** Offers from PANOLIN are binding if they are accepted before the expiry date stated in the offer. Offers without an expiry date (binding period) are not binding.

**2.2.** Subject to deviating assurances confirmed by PANOLIN in writing in individual cases, all deliveries and services will be carried out following the information in PANOLIN's technical specifications and the mandatory regulations and standards applicable in Switzerland at the time of the offer, even if this is not mentioned explicitly in the offer or order confirmation. Advertising brochures and catalogs are not binding.

## 3. Agreement

**3.1.** Orders placed by the Customer are deemed to have been accepted, and the Purchase Agreement between the Customer and PANOLIN has been concluded when PANOLIN has declared an acceptance/confirmation of order in writing, or when PANOLIN has begun processing the order, whichever is earlier.

**3.2.** By concluding the Purchase Agreement, the Customer acknowledges the binding nature of these General Terms and Conditions of Sale and Delivery of PANOLIN. Any terms and conditions of the Customer which deviate from these shall not apply, even if they are not expressly contradicted.

## 4. Prices

**4.1.** Unless otherwise agreed, PANOLIN's prices are in Swiss francs. Deliveries are FCA (Free Carrier) at the respective Swiss storage location, INCOTERMS 2020.

**4.2.** If the circumstances on which pricing is based, in particular currency parities or government/official taxes, duties, fees, customs duties, et al., change between the time of the offer and the agreed delivery date, PANOLIN is entitled to

adjust prices and conditions to the changed circumstances.

**4.3.** The agreed price is the price stated in an acceptance or order confirmation issued by PANOLIN.

**4.4.** All additional costs, such as those for shipping, insurance, export, import, and other permits or official documents, are borne by the Customer, who must also pay all taxes, levies, fees, customs duties and the like in connection with the order, or refund them to PANOLIN, insofar as PANOLIN is obliged to bear such costs.

## 5. Terms of payment

**5.1.** In the absence of any other written agreement, PANOLIN invoices are due immediately. They must be paid at the latest on the 30th day after the invoice date, without a discount or other deduction. Payment is deemed to have been made when the entire amount due has been credited in Swiss francs to one of the accounts listed in the invoice free of charges, and PANOLIN has free access to it. Offsetting against counterclaims is not permitted.

**5.2.** If the Customer does not meet the agreed payment deadlines, he will be in default without a reminder. He will have to pay default interest of 8% p.a. from the 31st day after the invoice date.

**5.3.** In the event of doubt about the Customer's ability to pay, in particular, in the event of late payment, PANOLIN is entitled to suspend order processing and retain deliveries ready for dispatch until the Customer has provided PANOLIN with appropriate security for payment. If the security is not provided within a reasonable period, PANOLIN may withdraw from the contract and demand compensation.

## 6. Delivery

**6.1.** PANOLIN is liable for compliance with delivery deadlines only after written confirmation and subject to the Customer's compliance with his contractual obligations. If a specific date is agreed instead of a delivery period, this date is equivalent to the last day of a delivery period.

**6.2.** The delivery period shall be deemed to have been observed if the delivery has been made or the Customer has been notified of its readiness for dispatch by the end of the period. Partial deliveries are permissible.

**6.3.** The delivery period shall be extended accordingly:

- if PANOLIN does not receive the information it needs to

fulfill the Agreement in good time, or if the Customer subsequently requests changes or additions

- if obstacles arise which PANOLIN cannot avert despite exercising due care, irrespective of whether these arise at PANOLIN, the Customer or a third party.
- if the Customer or third parties called in by the Customer are in arrears with the work to be carried out by them or are in arrears with the fulfillment of their contractual obligations, or if the Customer does not comply with the terms of payment

**6.4.** The Customer is entitled to claim compensation for delays caused by PANOLIN, provided that he can prove that he has suffered damage. If the Customer is helped out by timely replacement, the claim is void.

**6.5.** From the end of the second week of delay, compensation shall amount to a maximum of 0.5% for each full week of delay, but not more than 5% in total, calculated on the contract price of the delayed part of the delivery.

**6.6.** Once the maximum amount of compensation for the delay has been reached, the Customer may set PANOLIN a reasonable period of grace in writing. If this is not complied with for reasons for which PANOLIN is responsible, the Customer is entitled to refuse acceptance of the delayed part of the delivery. If a partial acceptance is economically unreasonable for him, he is entitled to withdraw from the Contract and to reclaim payments already made against the return of completed deliveries.

**6.7.** The Customer shall have no rights and no claims other than those expressly mentioned in the present Article 6 due to delays in delivery or performance.

## 7. Reservation of title

**7.1.** All goods and deliveries remain the property of PANOLIN until the Customer has fulfilled all related contractual obligations and, in particular, has made the full payment.

**7.2.** Until the ownership of the products has been transferred to the Customer, the Customer is obliged.

- to store the products separately from all other products in possession of the Customer, so that they remain easily recognizable as the property of PANOLIN
- not to remove, alter or deface any identification marks or packaging found on the products
- to keep the products in perfect condition and to insure them against all risks at the full sales price from the date of delivery
- to provide PANOLIN with all information about the products that PANOLIN requires from time to time.

**7.3.** The Customer is obliged to cooperate in all measures necessary to protect PANOLIN's property until the transfer of ownership, including entries in official registers.

## 8. Transfer of benefit and risk

**8.1.** Benefit and risk shall pass to the Customer upon completion of delivery ex-works (according to Incoterms 2020). If delivery or handover of the goods is delayed at the request of the Customer or for other reasons for which PANOLIN is not responsible, the risk is transferred to the Customer at the initially planned time.

## 9. Shipping and insurance

**9.1.** Unless otherwise agreed in writing, the following applies:

- All deliveries are arranged on behalf of the Customer. A relevant shipping and transport Agreement is concluded exclusively between the Customer and the carrier;
- All shipping and transport costs are at the expense of the Customer;
- Corresponding damage insurance is the responsibility of the Customer.

## 10. Compliance with export control regulations

**10.1.** The Customer acknowledges that the products and deliveries may be subject to Swiss and foreign legal provisions and regulations on export control and may not be sold, rented, or otherwise transferred or used for any other purpose than the agreed use without an export or re-export license issued by the competent authority. The Customer undertakes to comply with all relevant rules and regulations. He acknowledges that the regulations may change and apply to the Agreement in the currently valid wording.

## 11. Deficiencies and Warranty

**11.1.** The Customer is responsible for checking the deliveries' completeness and their suitability for the intended purpose immediately after delivery. If the Customer fails to carry out this check, PANOLIN cannot be held liable for defects.

**11.2.** PANOLIN guarantees that the products on delivery and for twelve months from the date of delivery comply in all essential points with the corresponding technical specifications of PANOLIN and are of perfect quality and suitable for the purpose indicated by PANOLIN.

**11.3.** Complaints must be submitted within seven days of receipt of the respective products, stating the order number, the invoice and delivery note number and the batch number(s) indicated on the individual container(s). Any defects discovered subsequently must be reported in writing immediately after their discovery.

**11.4.** In the event of complaints, the Customer must provide PANOLIN with a sufficient sample quantity of the delivered and rejected product. PANOLIN is entitled at any time to take samples of the products and deliveries, which are the subject of the complaint itself or to monitor the correct taking of samples.

**11.5.** PANOLIN will, at its discretion, repair or replace defective products or refund the defective products' price in full.

**11.6.** Any warranty and liability of PANOLIN are excluded in the following cases:

- The Customer continues to use the products after he has made a complaint.
- The defect has arisen because the Customer has not followed the verbal or written instructions of PANOLIN regarding storage, commissioning, installation, use, and maintenance of the products, or because he has not used the products correctly and for the intended purpose.
- The Customer changes the products without the written consent of PANOLIN.
- The defect arises from natural wear and tear and normal wear and tear or excessive strain.

- The defect is caused by chemical or other influences on the product or by contamination for which PANOLIN is not responsible.
- The defect is caused by third parties' actions or by other reasons and circumstances for which PANOLIN is not responsible.

**11.7.** PANOLIN is only liable to the Customer under the product warranty described above. All other warranties and the other related rights of the Customer are excluded to the extent permitted by law.

**11.8.** For a number of PANOLIN products, additional conditions and requirements apply which must be observed by the customer. These are attached to the offer or order confirmation, for example as an information sheet, and form an integral part of these General Terms and Conditions.

**11.9.** Notwithstanding all warranty claims, the contractual purchase price is due for payment within the agreed period. Payments due may not be set off against counterclaims unless these have been recognized by PANOLIN or have been legally established.

## 12. Confidentiality

**12.1.** Each party undertakes not to disclose to any person at any time any confidential information relating to the business, affairs, customers, clients, or suppliers of the other party or any member of the group to which the other party belongs, except as permitted under the Agreement

**12.2.** Either party may disclose the other party's confidential information to its employees, officers, agents, or consultants if they need to know such information to exercise the party's rights or to perform its obligations under or in connection with this Agreement. Each party shall ensure that all persons to whom it discloses the other party's confidential information comply with the confidentiality provisions and

**12.3.** Neither party shall use another party's Confidential Information for any purpose other than exercise its rights and perform its obligations under or in connection with this Agreement.

## 13. Data Privacy

**13.1.** The protection of all personal data during the entire business process is an essential concern of PANOLIN. Both parties will comply with all applicable requirements of the applicable data protection laws, including the General Data Protection Regulation of the EU ((EU) 2016/679).

**13.2.** Consequently, PANOLIN uses the personal data provided by the Customer only for the administration, processing, and fulfillment of the Agreement concluded with the Customer or to answer customer inquiries. The data may be disclosed within PANOLIN and its affiliated companies under group law to fulfill the Agreement.

**13.3.** PANOLIN will only use personal data provided by the Customer for surveys and marketing purposes if PANOLIN has received prior consent from the Customer.

**13.4.** The Customer acknowledges that the data, information, and documents concerning him may also be stored outside Switzerland.

## 14. Force majeure

**14.1.** Neither party shall be in breach of the Agreement. It shall be liable for any delay in the performance or non-performance of any of its obligations under the Agreement if the delay or non-performance is due to a force majeure event.

**14.2.** Force majeure shall be deemed to exist if the event is extraordinary, unforeseeable, and comes from outside, the event is unavoidable, the event occurs unexpectedly, the event has its origin outside the sphere of influence of the parties and the event could not be prevented despite due care.

**14.3.** In any case, war, war-like events, riots, export and import restrictions, boycott orders of state or supranational organizations, official measures or omissions; labor conflicts, other disruptions of operations through no fault of the company, pan- and epidemics, natural events and disasters, hacker attacks and terrorist activities shall be considered cases of force majeure.

**14.4.** If the delay or non-performance lasts for three weeks, the unaffected party may terminate this Agreement by giving five days' written notice to the affected party. All claims for subsequent performance, substitute performance, and damages against the affected party to the Agreement are excluded.

## 15. Extraordinary termination of Contract

**15.1.** PANOLIN has the right to dissolve this Agreement with immediate effect by written notification to the Customer, without limiting its other rights or remedies, if

- The Customer commits a material breach of any term of the Agreement and (if such breach is capable of remedy) fails to remedy such breach within 14 days of written notice.
- The Customer takes steps or measures in connection with its entry into liquidation or receivership or if the Customer agrees to a composition or an agreement with its creditors (composition agreement) if the Customer is liquidated or suspended, if the Customer threatens to suspend or discontinue the performance of all or a substantial part of its business, or if the Customer is no longer able to pay its debts when due.

**15.2.** If the Agreement is terminated, the Customer must immediately pay PANOLIN all open, unpaid invoices, including accrued interest.

**15.3.** Any provision of the Agreement, which is expressly or implicitly intended to enter into force or remain in force on or after termination, shall remain in full force.

## 16. Limitation of liability

**16.1.** Any claims of the Customer other than those expressly mentioned in these terms and conditions, regardless of the legal grounds on which they are made, in particular all claims for damages, reduction, cancellation of the Agreement, or withdrawal from the Agreement not expressly mentioned, are excluded.

**16.2.** Under no circumstances shall the Customer be entitled to claim compensation for damages that have not occurred to the delivery item itself, such as loss of production, loss of use, loss of orders, loss of profit, or other direct or

indirect damages.

**16.3.** This exclusion of liability shall not apply in cases of gross negligence or unlawful intent or contrary to mandatory law.

## 17. Assignment

**17.1.** PANOLIN may assign, transfer, encumber, subcontract or otherwise deal with all or part of its rights and obligations under the Agreement.

**17.2.** The Customer may not, without the prior written consent of PANOLIN, assign, transfer, pledge, encumber, subcontract, or otherwise trade in all or some of his rights and obligations under the Agreement.

## 18. Entire Agreement

**18.1.** This Agreement constitutes the entire Agreement between the parties. It supersedes and cancels all prior agreements, promises, representations, warranties, representations, and understandings between them, whether written or oral, concerning its subject matter.

## 19. Severance

**19.1.** If any provision or part of a provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the extent necessary to render it valid, legal and enforceable. If such an amendment is not possible, the provision or part of the provision in question shall be deemed deleted. Any modification or deletion of a provision or portion of a provision under this paragraph shall not affect the validity and enforceability of the remainder of the Agreement.

## 20. Notices

**20.1.** Any notice or other communication given to either party under or in connection with the Agreement shall be in writing. It shall be addressed to the party at its registered office (if it is a company) or principal place of business (in any other case) or at such different address as the party may have notified the other party in writing, and shall be delivered personally, by post or other delivery service or sent by fax or e-mail.

## 21. Variation

**21.1.** Amendments and supplements to the Agreement are only valid if they are made in writing and signed by the parties (or their authorized representatives).

## 22. Applicable law, place of jurisdiction

**22.1.** The Agreement and all disputes or claims (including non-contractual disputes or claims) arising out of or in connection with the Agreement, its subject matter or its formation shall be governed by Swiss law.

**22.2.** The United Nations Convention on Contracts for the International Sale of Goods (so-called Vienna Sales Convention) of 11.4.1980 shall not apply to this contractual relationship.

**22.3.** The parties agree that the competent courts at PANOLIN's usual place of business in Madetswil (Canton of Zurich, Switzerland) have exclusive jurisdiction to settle any disputes or claims (including non-contractual disputes or claims) arising from or in connection with the Agreement or its subject matter or conclusion.