

General Terms and Conditions for Services

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General Terms and Conditions for Services

General Terms and Conditions for Services of Pankl Racing Systems AG („Pankl“), Industriestraße West 4, A-8605 Kapfenberg, including all Pankl subsidiaries.

For our services (eg. heat treatment, coating, contract manufacturing) – also for follow-up orders during ongoing business relationships – the following terms shall apply in the respective current version except special agreements determine otherwise:

These General Terms and Conditions for Services shall apply to Pankl Racing Systems AG and its subsidiaries (hereinafter referred as „Pankl“ or „Pankl Group“).

A. Conclusion and Amendment of Contracts.

1. Purchasing conditions of customers shall apply to us only if we accept them explicitly and specifically. Any terms which deviate from our General Terms and Conditions for Services shall explicitly not be relevant. A lack of objection shall in no case be perceived as our consent.
2. Our offers are always non-binding. Orders received by us shall become binding once we confirm the order in writing. Amendments and cancellations of orders require our written confirmation.
3. Order cancellations and suspensions may happen only by mutual agreement. Any incurred expenses shall be borne by the customer.
4. The customer shall only be able to withdraw from the contract for as long as Pankl has not performed any execution acts yet. Such execution acts shall be deemed to be the commencement of services for a delivery as well as placed orders for materials, dies or anything similar.

B. Prices, Payment Terms, Collateral.

1. Any prices shall be net prices plus value added tax at the respective applicable rate, except if we are able to apply a tax exemption from the respective value added tax laws. If nothing else is specifically agreed, any prices shall be considered ex delivery works or factory warehouse or shipping point excluding the cost of any packaging so that handling fees and follow-on freight expenses shall be borne by the customer. Shipments shall always be made at the expense and risk of the recipient, which shall also apply for carriage paid deliveries. Prices which are valid on the date of delivery and number of units or meters which are determined at the delivery works shall be used to calculate the cost.
2. Our invoices shall be payable within 14 days from the invoice date in cash without any deductions except if something else is specifically agreed. Payment shall be made in a way that we can dispose of the funds by the last day at the latest.
3. We reserve the right to require a collateral for the fulfilment of the payment obligation ahead of shipment, no matter which payment terms were agreed in the business transaction. If such collateral is refused, we shall be entitled to cancel the order. Any expenses until that point shall be invoiced by Pankl.
4. If the financial position of the customer deteriorates after conclusion of the business transaction, our claim shall become due and payable immediately even if an extension or other delay of payment has been granted. This shall apply also if bills of exchange or cheques were received.
5. If the customer does not fulfil agreed payment obligations, we shall be entitled to withdraw from the contract and claim for damages without allowing a period of grace for business transactions which were not yet carried out and for step-by-step delivery transactions. We are always entitled to refuse delivery for as long as the customer has not fulfilled his / her obligations.
6. Late payments and / or delivery delays caused by the customer shall be subject to statutory default interest. We shall be entitled to balance incoming customer payments first with older outstanding amounts even if the customer requests otherwise. We are entitled to balance incoming payments first with open expenses, then with interest due and last with the outstanding principal amount. The customer shall not be entitled to balance outstanding amounts with receivables other than undisputed and legally recognised claims and shall not exercise any rights of retention or refusal to perform.
7. The customer shall comply with stated annual quantities and call such quantities within an allowed range of +/- 10%. If the customer does not call the stated annual or monthly quantities within the allowed range, Pankl shall be entitled to claim compensation for raw materials, semi-finished and finished goods which are in stock or have been ordered as well as for machine and personnel resources reserved by Pankl due to the annual customer forecasts.
8. Minimum amounts required by the customer shall apply only if we provided an explicit statement in writing, in which we confirm the received starting materials, the minimum amount to be delivered and any extra charges which in such cases shall be agreed. Process-related losses shall be expected for mass-produced items and small items, hence there shall be no claims for damages and / or claims for price reductions for losses amounting to up to 5% per delivery.

C. Intra-Group Settlement.

1. We are entitled to balance any claims which we have against a customer with any claims which this customer has against us or any company of the Pankl Racing Systems AG (Kapfenberg, Austria) Group no matter for which title or legal reason.

D. Delivery of Goods to be Processed.

1. Goods to be processed shall be delivery to us free of charge except otherwise specifically agreed in writing. Incoming and outgoing goods shall be monitored by weight and by number of units only if specifically required.
2. Goods delivered to us shall be accompanied by a delivery note, which shall contain the following information:
 - a. Number of units, type of parts, net weight;
 - b. Product classification (TARIC, country of origin, list of goods classifications for exports);
 - c. Information regarding the materials used and the requested manufacturing processes in accordance with OE-, DIN- or ISO-Norms;
 - d. For heat treatments: information regarding the expected tempering hardness and the expected strength of the steel;
 - e. For heat treatments: Definition of testing method and test station as well as permissible tolerances;

- f. For surface heat treatment processes: Information regarding the required hardening depth considering any subsequent mechanical processing;
 - g. Information regarding mechanical and thermal pre- and post-treatment and anticipated operating conditions of the finished goods as far as this is of relevance for the processing;
 - h. For partial processing, clear definitions of areas to be processed or appropriate drawings;
 - i. Appropriate labelling of security parts and prior definition as such.
- If such information is missing, incomplete or incompatible with our processing facilities, we shall be entitled to decline the execution of the order or to execute the processing using our discretion at the customer's risk. In such case we shall not be liable for the results so that any claims for warranties or damages shall be excluded. Information which is not included in the delivery note but in separate correspondence or is communicated orally cannot be taken into consideration for operational reasons.

E. Delivery Periods and Dates.

1. We calculate delivery periods from the date of the orderly receipt of the goods to be processed in our processing facility if not otherwise specifically agreed in writing. If technical processes need to be discussed beforehand, commencement of the delivery period shall be delayed until any issues are cleared. Stated delivery periods and dates are non-binding, i.e. have no legal impact. The customer is not entitled to refuse partial deliveries.
2. The provision of the good to be collected or handed over to the freight forwarder at the processing plant shall determine whether delivery periods or dates are complied with. Goods ready for collection shall be deemed to be handed over. Delivery periods are complied with as soon as notification is made that the goods are ready for collection, even if shipment cannot be made in time without fault. Delivery periods extend by the time the customer is in default with his / her obligations to us. This does not impact our rights resulting from customer defaults. The same also applies for delivery dates.
3. Clause E2 shall also apply if fixed delivery periods or dates are explicitly agreed.
4. In the case of force majeure, delivery periods and dates shall be extended or delayed appropriately. Force majeure shall constitute among other things also industrial disputes in our own or other companies, transport delays, mechanical breakdowns, sovereign measures and other unusual circumstances which are out of our control. We shall notify the customer immediately when a force majeure event happens. The customer shall have the right to withdraw from the contract six weeks after receipt of our force majeure notification at the earliest.
5. If the customer refuses receipt of the goods, he / she shall be required to bear any expenses with regards to storage and transport of the goods irrespective of the customer's payment obligations. The purchase price shall be due immediately with refusal to accept the goods. It is at our discretion to claim for damages for default. Defects which do not affect the customary use of the goods in a material manner shall not entitle the customer to refuse acceptance of the goods.
6. Any acceptance procedures agreed shall only happen at the delivery factory immediately after the notification that the goods are ready for collection. The customer bears any of his / her costs for the acceptance procedure. We are entitled to invoice our material and equipment costs according to our price list. If acceptance does not happen at all, not completely or not in time, we shall be entitled to ship the goods without acceptance or to store the goods at the expense and the risk of the customer. The goods shall in any way deemed to be delivered in accordance with the contract as soon as they are shipped or stored.

F. Measurements, Weight, Quality.

1. Deviations in measurements, weight or quality are permitted within the tolerances allowed in the agreed norm (e.g. EN, DIN, OE) or by common practice.

G. Shipping, Packaging and Transfer of Risk.

1. We shall use the packages of the goods supplied to us for processing for the packaging of the finished products except special packaging is explicitly agreed. Additional packaging expenses to avoid transport damages shall be borne by the customer. Pankl shall appoint the freight forwarder except otherwise agreed.
2. If loading or shipment of the goods is delayed due to reasons which are down to the customer, we shall be entitled to store the goods at the expense and risk of the customer at our reasonable discretion. We shall further be entitled to take any measures we consider suitable and to invoice the goods as delivered. Legal rules regarding acceptance delays remain unaffected.
3. The customer shall immediately arrange for a written damage report if transport damages are discovered.
4. Packaging expenses are invoiced separately. There is no refund if goods are returned.
5. Transfer of risk takes place as soon as the goods are passed to the freight forwarder or at the latest when the goods are leaving the delivery factory or the warehouse. In addition, if no other rules apply the various interpretations of trade terms of sale shall be determined by the Incoterms 2020 respectively their latest version.
6. Customs duties or similar fees shall be borne by the customer.

H. Quality.

1. The execution of the order shall be subject to the quality values defined in the order confirmation. If in doubt relevant industry norms, especially the standard specification sheets issued by the Austrian standard committee for norms shall be used to evaluate quality and execution.
2. The customer shall be obliged to assure seamless traceability of our goods, parts and / or systems. If the customer requires Pankl to provide a unique serial number labelling, he / she is obliged to apply such labelling in the same way. Otherwise Pankl shall not accept any related expenses such as sorting costs and any further claims for damages. This applies especially to safety critical parts and / or systems which may represent an immediate danger to life and limb in case of mistakes or failures.
3. **The following Clause applies to heat treatments only:** We process goods with the highest possible care and modern means. Goods may suffer distortions, breakages or form cracks during hot or cold straightening which derive from pre-determined breaking points such as notches, grooves or sharp-edged junctions due to their metallurgical conditions. As even the highest possible care cannot avoid this, we do not accept any warranty or liability from our side as the described consequences are due to the condition of the goods supplied to us. The same applies to hardness, surface quality and

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hardening depth due to the metallurgical condition of the goods which we cannot influence.

I. Acceptance and Inspection.

1. The customer is free to use an acceptance process for the finished goods. We shall only be obliged to disclose to the customer the time of shipment beforehand, if the customer tells us at the time of ordering that he / she requires an acceptance procedure. If the acceptance procedure cannot take place at the desired time of shipment, then the goods shall be shipped without acceptance. An intended acceptance of goods due to special quality requirements shall be defined in an explicit and written special agreement with conclusion of the transaction. Such acceptance of goods shall be carried out within 14 days from the notification that the finished goods are ready for collection from our delivery factory at the expense of the customer in an Austrian government testing institute. This right of acceptance of goods due to special quality requirements expires once the 14 days period has passed. If goods are accepted, they shall be deemed to be approved and there shall be no liability from us whatsoever, also regarding undetected mistakes, which could have been detected during the acceptance process.

J. Warranty Claims.

1. Whether a finished good is in accordance with the contract shall be determined at the point in time when the good leaves the delivery factory or warehouse. Whether our finished goods are according to contract and flawless shall exclusively be determined by explicit agreements regarding quality and number of ordered goods.
2. We carry out random checks before goods leave our premises. Further inspections shall only be carried out if specifically agreed in writing and if the additional expenses are invoiced to the customer. Any goods leaving inspections carried out by us shall not release the customer from his / her obligation to carry out incoming goods inspections.
3. The customer shall provide to us written complaints within 14 days after the goods arrived at their place of destination. Defects which may not be detected by suitable careful and professional inspection within such time period (hidden defects) shall be notified immediately when discovered, however, at the latest within three months after receipt of the goods. After expiration of such three months' time period we shall not be liable for any defects whatsoever for any reason or any title. The customer shall not be able to claim any defects if the goods are subject to an acceptance procedure and the defects can be detected in such procedure.
4. The customer is required to provide evidence that the defect was present at delivery and shall make sure that the condition of the good remains unchanged since then. Any rules which require reversal of the burden of proof in connection with warranties and damages shall be waived herewith.
5. It is our discretion to either improve defective parts free of charge or replace them. Our liability is limited by the value of the processing which we carried out on the good. If we improve defective goods at our premises, we shall be granted a reasonable period of time to carry out the work. If improvement work of the goods is not possible, we shall carry out the contractually defined processing free of charge on replacement goods which shall be supplied by the customer.
6. Deviations in quality, form, measurements, colour, weight or characteristics which are customary, of little technical importance or are not avoidable shall not be deemed to be defects and are not subject to warranty. We shall not be subject to any liability for warranty if the defect is due to normal wear and tear, improper storage or treatment, unusual environmental impacts, insufficient maintenance, transport damages, or if the customer has provided defective materials. There is no warranty for racing and development parts.
7. We do not provide any guarantees or other assurances without causal relation and irrespective of fault for any of our orders or products. In particular, we do not make any representations that the goods processed by us are suitable for a special use or purpose, except if explicitly described and defined as a "guarantee".
8. Pankl does not accept any complaint costs which are invoiced by the customer unjustified without prior agreement. Pankl will reject any such invoices.

K. Liability.

1. Our liability shall be defined by these Terms and Conditions only. Damages for slight negligence, non-performance or late performance, negligent or grossly negligent pre-contractual or secondary infringements, especially regarding duties to advise and provide information shall be excluded. Further excluded are consequential damages which may occur and any compensation for loss of profit. We shall in no way be liable for faults of suppliers or other companies we may use to perform our contractual duties.
2. Our liability for claims of whatever type shall in total be limited in the amount by our business liability insurance coverage. Furthermore, our liability for violations of contractual duties is limited in the amount to the value of the processing we carry out on the customers' goods which is the cause of the damage.
3. The above-mentioned limitations of liability do not apply for personal injuries. The rights to claim for personal injuries or damages to objects in private use in accordance with the product liability law remain unaffected.
4. Pre-negotiations cannot lead to damages claims against us in any way. Claims from *culpa in contrahendo* are excluded. Liabilities from advertising messages are excluded. Commitments are only valid, if explicitly defined in our order confirmation. Our employees, agents and other persons are not authorised to modify these General Terms and Conditions for Services or enter into any oral agreements.
5. The customer shall be liable for any damages, expenses and losses, which we suffer from (i) the customer's supply of faulty goods, (ii) the customer's transmission of incorrect data regarding the properties and condition of the goods to be processed, or (iii) the customer's delivery of goods in an unprepared or dirty condition.

L. Other Items.

1. Any customer requirements or comments which are not consistent with these General Terms and Conditions for Services are only binding for us if explicitly agreed in writing only for the business transaction the agreement refers to. A lack of objection shall in no case imply our agreement.

2. We shall be entitled to carry out partial deliveries. Additional expenses which we incur in such cases shall not be borne by the customer if we are responsible. Prices remain unaffected. Each partial delivery shall be deemed to be a separate business transaction.
3. Development services are partial components of a higher complete project, in which Pankl provides comprehensive project management and development and management functions for all project areas and development steps both from a technical as well as organisational perspective. Such services are hence considered in-house research and development activities in accordance with chapter 108c, paragraph 2, item 1 of the Austrian income tax law (§108c Abs 2 Z 1 EStG) and represent state-subsidised R&D expenses.
4. The customer shall notify Pankl immediately and prior to contract conclusion regarding any export restrictions or obligations and undertakes to declare the Export Control Classification Number (ECCN). If export licenses are required, our order restrictions shall always depend on the granting of Austrian export licenses.
5. These General Terms and Conditions for Services shall exclusively be subject to Austrian law with the exception of the conflict of law rules of Austrian private international law and the UN Sales Convention (application of the United Nations convention regarding contracts for international goods purchases) and other UNICITRAL purchasing rules. Pankl Group companies which are based outside of Austria shall have the right to agree the exclusive use of the law of the state in which they are based, which shall be notified to the customer.
6. Any disputes from business relationships between customers based in the EU, the EEA or Switzerland and us shall be brought to the competent court of Leoben, Austria with regards to validity, existence, interpretation, etc.
Any disputes from business relationships between Pankl Group companies based not in Austria, but in the EU, the EEA or Switzerland and customers may be brought to the competent court of the location where the Pankl company is based, which shall be notified to the customer.
For any disputes from business relationships between Pankl Group companies based not in the EU, the EEA or Switzerland and customers the following shall apply: Any disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The Emergency Arbitrator Provisions shall not apply. The language of arbitration shall be German, the place of arbitration shall be Leoben, Austria.
Pankl shall have the unilateral right to initiate court proceedings at a competent court at the place where the customer is based and hence to invalidate the dispute resolution and arbitration clauses.
In all these cases the parties shall have the right to apply for temporary legal protection measures at a competent court.
7. If any provisions of these General Terms and Conditions for Services shall be held to be invalid or unenforceable, in whole or in part, the remainder of the General Terms and Conditions for Services shall not be affected. It shall be agreed that the invalid or unenforceable provision shall be replaced by such valid and enforceable provision which corresponds closest to the original intention and purpose of the invalid or unenforceable provision. The same shall apply for contract omissions.
8. Deviations from these General Terms and Conditions for Services shall only be valid if individually and specifically agreed in writing.