

General Conditions for sales and delivery of Peninsular de Vastagos SL

1. General provisions

1. The General Terms of Sale apply to and conform an integral part of all quotations, offers and/or (legal) acts of Seller and any agreement under which the Seller is obliged to sale or to undertake delivery, or under which Seller sales or undertakes to deliver products and goods and determine the relations between the Seller and the Buyer. The same applies to obligation of Seller to provide services or to provision of services by Seller.

2. The terms and expressions used in the GTS have the following meaning:

- GTS - General Terms of Sale
- Seller – Peninsular de Vastagos SL.
- Buyer – the contracting party and/or the counterparty of the Seller
- Parties – Seller and Buyer jointly
- Contract – the contract concluded between the Seller and the Buyer,
- Goods – products and merchandise sold by the Seller

3. Alterations of the General Terms of Sale are only valid if accepted by Seller in writing.

4. The GTS constitutes a complete binding regulation for the Parties of the Contract. Other trade terms or contractual standards applied by the Buyer are not applicable, unless explicitly accepted by Seller in writing.

5. Once the GTS apply, they shall also, without further notice, apply to further quotations, offers and/or (legal) acts of Seller and any new Contracts. GTS also apply to all quotations, offers and/or legal acts and/or conduct of Parties although the Contract was not concluded, but Parties acted in a way that it might have been presumed that they intended to conclude the Contract.

6. The General Terms of Sale are disclosed to the Buyer on the Seller's website in a form which allows them to be downloaded and reproduced.

2. Conclusion of the Contract

1. The specifications of Goods, price lists and other information are not binding for the Seller and do not constitute offers of concluding contracts, but are merely trade information. Liabilities and oral arrangements made with the Seller's employees are not binding unless confirmed in writing by an authorized representative of Seller.

2. The contract is concluded at the moment when the Seller confirms the acceptance of the order. In case there is a discrepancy between the Buyer's order and the Seller's order confirmation, the order confirmation will prevail.

3. All supplements and annexes to the Contract are only valid if explicitly accepted by Seller in writing.

4. The Seller is entitled to withdraw from executing the Contract in case of the occurrence of force majeure. Force majeure is understood as an extraordinary event, unforeseeable, beyond the control of a given Party, which the Parties could not have averted such as, but not limited to a strike, military conflict, natural disaster, explosion, fire, etc. The same applies to legislative act of a State Authority that renders the performance of the Contract impossible or changes the content of Party's performance in such a way that the Contract loses, partly or entirely, economic significance for either Parties or one of them (fait du prince).

5. The Seller is also entitled to terminate the Contract, without being liable for any costs and/or damages to the other Party, in case of employee conflicts, customs or currency restrictions, power problems, delays in the supplies by Seller's suppliers or third entities, shortages of Goods or resources, decisions of authorities impeding a certain type of business, transportation problems and other obstacles in carrying out the Contract.

3. Delivery, acceptance of goods and claims

1. The agreed delivery dates and times shall always be approximate and subject to unforeseen circumstances. If the delivery cannot be executed in the agreed period of time, the Seller is entitled to execute partial shipments and prolong the delivery date.

2. The postponement of the delivery date does not entitle the Buyer to terminate the Contract or to claim any compensation subject to the provisions of article 9.2.

3. Immediately following the delivery of Goods, the Buyer is obliged to inspect the Goods and ascertain whether there are possible differences in relation to terms agreed in the Contract, including quantitative and qualitative terms. Any claims must be submitted to the Seller in a written form within five working days from the delivery date, otherwise such claim will be null and void.

4. In case of claims, the Buyer is obliged to keep the claimed Goods and render it accessible to the Seller for inspection.

5. Submitting the claim cannot withhold the payment for the delivered Goods, including the claimed Goods.

6. Claims concerning defects, which ascertainment has not been possible during inspection mentioned in point 3, should be submitted to the Seller in a written form within ten days after their ascertainment, however, not later than six months from the delivery, otherwise such claim will be null and void. Any legal steps must be undertaken within one year from submitting the claim in the indicated period, otherwise such claim will be null and void.

7. Quality requirements or quality standards with respect to goods to be delivered by the Seller must have been agreed explicitly. Minor variances and differences in quality, color, size or finish - usual in the sector or technically unavoidable - shall not be regarded as a shortcoming and do not constitute grounds for dissolution or compensation.

8. The Goods delivered by the Seller shall comply with the agreed quality standards. Any (other) warranty and/or representation expressed and/or implied by statute, law, contract, custom of trade, usage or otherwise is hereby excluded. Furthermore, the Seller does not guarantee and shall never be deemed to have guaranteed or to warrant that the Goods purchased are suitable for the purpose for which the Buyer wishes to treat or process them or wishes to use them or cause third parties to use them. Samples shall be provided for indication purposes only.

9. The Seller's liability in the event of an error or shortcoming in the performance of the Contract, shall be limited at all times to redelivery of Goods substituting the non conforming Goods, to repair the non conforming Goods or to the invoice amount of the non conforming Goods concerned as stated in the order, such at the discretion of the Seller.

10. Seller's liability and indemnification obligations are furthermore exclusively limited to the direct losses of the Buyer. Liability for indirect and/or consequential loss and damage, whether or not foreseeable, is explicitly excluded.

11. Without prejudice to the foregoing, Seller's liability shall furthermore in no event exceed an amount equal to the amount paid out under the Seller's insurance.

12. The Buyer loses his right to submit claims if: - and for as long as the Buyer is in default vis-à-vis the Seller, - the Goods have been exposed to abnormal conditions and/or have been handled incompetently or without due care, - loss of the quality of the Goods was caused by the Buyer's prolonged storage.

13. The Buyer shall indemnify the Seller against any third-party claims for compensation for loss or otherwise which relate directly or indirectly to any delivery commitment, the delivery of Goods, the delivered Goods themselves or the use thereof or any work or recommendations. The Buyer furthermore indemnifies the Seller against any claims by third parties for compensation for loss or otherwise which relate directly or indirectly to the editing and/or (electronic) transmission of the information furnished by the Seller.

4. Transport

1. All deliveries are ex works (Incoterms 2010), unless explicitly agreed otherwise.

2. After declaring the readiness for the Goods to be dispatched, irrespective of the way the delivery is to take place, the Buyer is obliged to collect the Goods immediately. In case the Buyer does not collect the Goods, the Seller is entitled to store the uncollected Goods at the Buyer's cost and risk or terminate the Contract.

3. The Buyer is obliged to unload the Goods delivered to the agreed place of delivery as quickly as possible at his own cost and risk. In case of a delay in unloading the Goods, the Seller will unload the material at the Buyer's cost and risk. The Seller under no circumstances is obliged to secure the Goods after their unloading.

4. If the Buyer refuses to collect the Goods at his storage yard, he is obliged to incur the transport costs of the Goods back to the Seller and subsequently, to store the Goods according to principles determined in point 2.

5. In case of Seller's transport, the Seller is responsible for the designation of the transport mode, the choice of the means of transport, which may not give rise to any claims thereof.

5. Prices and payment terms

1. Unless otherwise agreed to, the quoted prices are ex works or ex warehouse. All prices are exclusive VAT, taxes, levies and duties and costs for tests and/or inspection.
2. In case of price changes of materials used for production, raw materials, introduction of customs duties or other obligatory fees, changes in foreign currency exchange rates, even after concluding the Contract, the Seller is entitled to increase the price respectively and Buyer will pay these increases.
3. Payment shall be made without cash discounts immediately so that we can dispose of the sum on the due date.
4. The date on which cash is transferred to the Seller's bank account is considered as the payment date. The Buyer is not entitled to any discount, set-off and/or suspension.
5. If the Seller reasonably believes that the Buyer's financial position so warrants, the Seller shall be entitled – at its sole discretion - to request payment in advance, including those which are not yet due, or the provision of security and, in anticipation thereof, to suspend the performance of the Contract in whole or in part and the Buyer will be obliged to fulfil such request immediately.
6. In case of a payment delay, the Buyer is obliged to pay statutory interest for the delay.
7. In case of a payment delay of the receivables or a partial payment by the Buyer or not fulfilling other duties by him in relation to the Seller, the Seller is entitled to suspend further deliveries of the Goods or make them dependent on receiving an adequate advance payment.

6. Retention of title

1. The delivered Goods remain the exclusive property of the Seller until the Buyer effects full payment of the price in accordance with the Contract. Until such time the Buyer is obliged to store and separate the delivered Goods as the Seller's property and has the duty to adequately secure and insure the Goods.
2. Buyer transfers to Seller his claim or claims as well as future claim or future claims, to which Buyer is or will be entitled in respect of further resale of the Goods to a third party. Return transfer is to be effectuated when Buyer fully pays price of the Goods, resulting from invoice issued in accordance with the Contract. In case of transformation or merger of the Goods, made by Buyer or on his account, the title to goods issued in such a way is vested to Seller. It applies respectively to confusion of the Goods with other goods in such a way that their identification is impossible.
3. The Buyer takes over the risk of losing or damaging the Goods from the moment of handing over the Goods and in case of transporting them by a carrier from the moment of handing over the Goods to the carrier.

7. Grades and Sizes

1. Grades, sizes and classification of the goods shall be determined in accordance with the agreed standards or, in absence of such an agreement, with the standards effective at the time of the conclusion of the contract, or in absence of such standards with trade practice and usage. Any reference to such standards and to similar rules, to works certificates and to similar inspection documents as well as reference to grades, classification, sizes, weights or usage of the goods shall not be regarded as a description, a warranty of fitness for a special purpose nor as a guarantee.

8. Testing and Inspection

1. Where testing and inspection of the goods have been agreed upon, the goods must be inspected in the mill or in our warehouse immediately after the Buyer has been informed that the goods are ready for dispatch. The Buyer shall bear his personal inspection costs, whereas the costs of inspection will be invoiced to him.

2. Should, through no fault of ours, the inspection of the goods fail or be delayed or be incomplete, we shall be authorised to dispatch the goods without prior inspection or to store them at the Buyer's expense and risk and to invoice the goods to him.

9. Termination of the Contract

1. The Seller shall be entitled to terminate the Contract in writing in whole or in part forthwith and without judicial intervention being required and without being obliged to pay any compensation for any loss whatsoever if:
 - a. at first request the Buyer refuses to make a payment in the circumstances referred to in article 5;
 - b. the Buyer files for a moratorium or for its bankruptcy or if a third party files for the bankruptcy of the Buyer or if the Buyer is dissolved;
 - c. the Buyer does not, not in full, not properly or not in time, comply with any of its obligations under the Contract towards the Seller and despite a request thereto, fails to remedy such shortcoming within 7 days after such a request is made.
2. The contract may only be terminated by the Buyer provided that a prior written consent from the Seller was obtained. If the Seller gives consent for terminating the contract, the Buyer is obliged to pay a contractual penalty for the termination of the contract in the amount of 25% of the net value of the Goods that have been ordered but not yet delivered.
3. After the termination of the Contract, if the Goods were collected from the Seller, but not paid, the Buyer is obliged to immediately deliver them back to the Seller's storage yard at his own cost and risk. The preceding sentence does not apply, if the Buyer immediately pays for collected goods.
4. If Seller is prevented from performance of its obligations for a continuous period in excess of three months in the event of force majeure as referred to in clause 2.4 either the Buyer or the Seller may terminate the Contract in writing forthwith and without judicial intervention being required and without being obliged to pay any compensation for any loss whatsoever.

10. Final provisions

1. The Buyer may not assign and/or transfer any of its rights, obligations and/or its legal relationship under the Contract without the Seller's prior written consent.
2. The commercial information of the Seller, which the Buyer obtained from or on behalf of the Seller is strictly confidential. The Buyer is not entitled to use or disclose this information to third parties.
3. The Spanish Law is applicable to the GTS and the Contracts. The provisions of the UN Convention on contracts for the International Sale of Goods (Vienna Sales Convention) shall not apply, nor shall any existing or future international regulations for the sale of goods the applicability of which can be excluded by the Parties.
4. All disputes between Parties will be settled by a court that has territorial jurisdiction over the Seller.
5. In case of other language versions of the GTS, the Spanish language version will prevail.
6. If any provision in this GTS or a Contract shall be held to be illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be deemed not to form part of this or a Contract but the legality, validity and enforceability of the remainder of this GTS or Contract shall not be affected. To the extent permitted by law, such provision shall be deemed substituted by provisions (i) that are valid, legal and enforceable and (ii) the operation and effect of which are as similar as possible to the provisions they substitute for.